

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1030

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 77-1030

UNITED STATES OF AMERICA

APPELLEE,

- v. -

WAYNE BROWN,

APPELLANT.

B
P/S

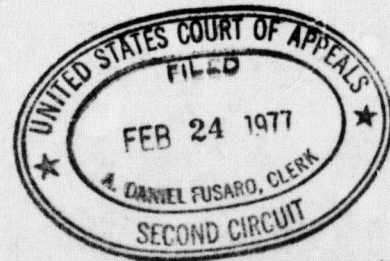
On Appeal from the United States District Court

For the District of Connecticut

Appendix for the Appellant

Daniel H. Kennedy, Jr.
Special Federal Public Defender
10 Ellsworth Road
West Hartford, Connecticut 06107

VOLUME I



PAGINATION AS IN ORIGINAL COPY

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44 5mg
PETER C. DORSEY
United States Attorney

Albert S. Dabrowski
ALBERT S. DABROWSKI
Assistant United States Attorney

Thomas P. Smith
THOMAS P. SMITH
Assistant United States Attorney

05
205 2

BROWN, WAYNE

9 17 76 97 1

U.S. TITLE SECTION
18:2113(a)OFFENSES CHARGED
bank robbery by force, violence
and intimidationORIGINAL COUNTS
1U.S. MAG.
CASE NO.

BAIL • RELEASE

☐ AMT ☐ Fugitive
☐ Set ☐ Pers. Recog
☐ PSA

\$100,000

Date
9/17/76☐ Bail Not Made
☐ Status Changed
☐ 10% Deposit
☒ Surety Bond
☐ Collateral
☐ 3rd
☐ Prie Lost
☐ Other

II. KEY DATES & INTERVALS

ARREST or

U.S. Custody Began

Summons Served

First Appearance

INDICTMENT X

High Risk Date

Information ☐
9/17/76Indict. Waived ☐In Charging
DistrictSuperseding
☐ Indict/Info ☐

ARRAIGNMENT

9/24/76

1st Plea
9/24/76

Final Plea

Trial Set For
10/26/76☒ NG ☐ G ☐ NOL☐ G Plea
☐ W/Drawn☐ NG ☐ G ☐ NOL

TRIAL

Voor Dire ☒
11/16/76Trial Began ☒
11/16/Trial Ended
11/19

SENTENCE

Disposition
of Charges

11/19/76

1-3-77

☒ Convicted
☐ Acquired
☐ Dismissed
☐ On All Charge
☐ On Lesser
Offense(s)
☐ WOP
☐ On Government's Motion

MAGISTRATE

		DATE	INITIAL NO	INITIAL APPEARANCE DATE		INITIAL NO	OUTCOME
Search Warrant	Issued			PRELIMINARY EXAMINATION	Date		<input type="checkbox"/> DISMISSED HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
	Arrested				Date		
Summons	Issued			REMOVAL HEARING	Date		HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BEYOND
	Served				Date		
OFFENSE (in Complaint)				Type Number			

Attorney or Asst.

Peter C. Dorsey, U.S. Atty.
Albert S. Dabrowski, Asst.
Thomas P. Smith, Asst.

ATTORNEYS

Daniel H. Kennedy, Jr.
10 Ellsworth Road
W. Hartford, Conn. 06107
233-4471

LEWIS - 2

1976
9/17Indictment, filed. Bench Warrant to issue as a
detainer. Bond set at \$100,000 full surety.
(Eagan, Mag.)9/20
9/21Bench Warrant issued and handed US Marshal.
Application For Writ of Habeas Corpus Ad
Prosequendum with Order of Court thereon,
filed. (Elumenfeld, J.) Two attested copies
handed US Marshal in Hartford. M.9-21-76.

9/24

PLEA of not guilty entered to one count.
Counsel to be appointed. Appearance of Daniel
H. Kennedy, Jr., filed. Case continued on same
bond. Case continued until 10/26/76 for trial.
Notice of Readiness, filed. (Eagan, Mag.)

9/24

CJA 23 Financial Affidavit, filed.

9/27

CJA 20 executed (Templeton, D.C.) appointing
Daniel H. Kennedy to represent deft.

9/30

Notice of Compliance With Local Rule 4 of the
Speedy Trial Act, filed.

10/8

Suppl. Notice of Compliance With Local Rule 4 of the
Speedy Trial Act, filed.

BEST COPY AVAILABLE

Continued

1976

10/8

Motion To Sever and Motion To Reveal Identity of Informant, filed.

10/14

Motion For Discovery and Inspection, filed.

10/15

Govt's. Opposition to Deft's. Motion For Discovery and Inspection and Govt's. Memorandum in Opposition to Deft. Brown's Motion to Sever, filed.

10/26

Appl. and Authorization for Investigative Services with ORDER thereon granting same, filed. (Blumenfeld, J.) m-10/27/76

11/1

CJA 21 executed (Blumenfeld, J.) authorizing special services, filed.

11/2

Second Supplemental Notice of Compliance With Local Rule 4 of the Speedy Trial Act, filed.

11/2

Hearing on Motion For Discovery & Inspection - Denied. Motion to Reveal Identity of Informant - Withdrawn. Motion to Sever - Over - to be rescheduled. (Blumenfeld, J.)

11/3

Court Reporter's transcript of Proceedings held on November 2, 1976, filed in Hartford. (Collard, R.)

11/5

Notice of Witnesses Govt. Intends to Call During its Case-in-Chief, filed.

11/9

Court Reporter's transcript of Proceedings held on Nov. 2 and 4, 1976, filed in Hartford. (Collard, R.)

11/12

Application and Authorization For the Issuance and Service of Subpoenas, filed, with Order thereon. (Clarie, J.) M.11-15-76. Two attested copies handed US Marshal and one copy mailed to Atty. Kennedy.

11/16

JURY TRIAL commences. Def's. Voir Dire Questions, filed. Govt's. Voir Dire Questions, filed. 44 jurors respond to roll call and are sworn on Voir Dire. 3 jurors excused for cause. Panel of 28 jurors drawn. Challenges by parties. Additional juror drawn. Jury of 12 and 2 alternates drawn & sworn. 7 Govt. witnesses sworn & testified. Govt. exh. #1,2,3,13,16,15,14,20,12,11,21,19,18, and 25(d) thru 25(h) marked for identification. Govt. exh. #22 thru 25(c), filed. Stipulation of Parties, filed. Juror questioned by Court. Court adjourned at 4:55 p.m. (Blumenfeld, J.)

11/15

Receipt from Dora Adams (F.P.D's. Office) re return of Deft's. exh. #1, filed.

11/17

JURY TRIAL continues. 14 jurors report. Deft. orally moves to replace juror with alternate #1. Motion Granted. 10 Govt. witnesses sworn & testified. Govt. exh. 4 thru 10(a) for identification made full exhibits. Stipulation of Parties filed. Govt. exh. 17 and 27 for identification made full exhibits. Govt. exh. 11 thru 20 and 26 thru 30 made full exhibits. Endorsement entered and filed on Motion to Sever, "granted - For all purposes this case has been

V. EXCLUDABLE DELA

DATE
1976

PROCEEDINGS (continued)

(a) (b) (c) (d)

11/17

(Document No.)

(cont'd.) severed from that of Arlo Lewis' - and the trial thus far has proceeded on that basis." (Blumenfeld, J.) M.11-18-76. Copies sent to counsel. Application For Order Instructing Witness to Testify, filed by US Atty. with Affidavit of Tom Smith re Arlo Lewis. Order ordering Arlo Lewis to testify, filed. (Blumenfeld, J.) M.11-18-76.

Court adjourned at 5:00 p.m. (Blumenfeld, J.)

11/18

JURY TRIAL CONTINUES: - 14 Jurors report - Govt. Witness sworn and testified - Govt. exhibit #21 made full exhibit - 3 Govt. Witnesses previously sworn, recalled and testified - Govt. rests at 11:15a.m. - Deft. Motion For Judgment of Acquittal, Denied - 7 Deft. Witnesses sworn and testified - Deft. rests at 12:22p.m. - Govt. starts rebuttal at 12:22p.m. - Govt. rests rebuttal at 12:40p.m. - Govt's requested Jury Instructions, filed - Def's. Request to Charge, filed. Summations from 2:02p.m. to 2:59p.m. - Govt. rebuttal from 3:00p.m. to 3:10p.m. - Court charges from 3:20p.m. to 4:28p.m. - Jury retires at 4:28p.m. Alternate juror excused - Exhibits and Indictment brought to jury at 4:35p.m. - Jury called into Courtroom at 4:45p.m. and Court clarifies portion of charge - Jury returns to deliberation at 4:46p.m. - Court Exh. A, note from Juror at 4:46p.m. - Court Exh B, note from Jury at 5:49p.m. - Court excuses jury at 5:50p.m. to return at 10:00 a.m. on 11/19/76 to resume deliberations. Court adjourned at 5:50p.m. (Blumenfeld, J.)

11/19

JURY TRIAL continues. 14 jurors report, and continue deliberations. Jury reported verdict of guilty as charged at 11:03 a.m. - Jury polled at request of Def. Court accepts verdict and ordered it recorded. Jury excused until notified by Clerk's Office. Court adjourned at 11:20 a.m. (Blumenfeld, J.)

12/10

CJA 21 executed (Blumenfeld, J.) and mailed to A.O. for payment.

12/10

CJA 21 executed (Blumenfeld, J.) authorizing transcript.

12/10

Court Reporter's notes of Proceedings held on Nov. 2, 1976, filed in Hartford. (Collard, R.)

1977

1/3

DISPOSITION: eight years imprisonment. Oral motion of Govt. for return of gun (.38 Colt Spec.) entered by Govt. as Exhibit in Trial, Granted by Court. (Blumenfeld, J.)

1/3

Receipt signed by Albert S. Tabrowski for exh. 21, namely .38 Colt Spec. and two ctges, filed.

1/5

Judgment and Commitment Order, filed. (Blumenfeld, J.) M.1-6-77. Two attested copies handed US Marshal and one attested copy handed US Probation Officer.

1/6

Marshal's executed return, filed. (Warrant For Arrest of Deft.)

1/11

Notice of Appeal, filed. Copies sent to counsel of record.

Interval

Start Date

Lit

DATE		PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
1977		(Document No.)	(a)	(b)	(c)	(d)
1/11		Certified copies of Notice of Appeal and docket entries mailed to USCA.				
1/11		Notice of Transcript and Statement of Issues For Appeal, filed.				

OFFENSE NO
OFFENSE NO
IN ARREST

05
205 2

LEWIS, ARLO

9 17

76 97

2

18:2113(a)

bank robbery by force, violence and
intimidation (ct. #1)

INFORMATION:

18:2113(b)

carry away monies from a federally-
insured institution

1

BAIL • RELEASE

☐ AMT ☐ Fugitive
Denied Set ☐ Pers. Recog.
☐ FSA

\$ 100,000

Date 9/17/76

☐ Bail Not Made ☐ Collateral
☐ Status Changed ☐ 3rd ☐ Other

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Began	High Risk Date 9/17/76	9/24/76	Trial Set For 10/26/76
Summons Served	Indict Waived	9/24/76	<input checked="" type="checkbox"/> NG <input type="checkbox"/> G <input type="checkbox"/> NOL
First Appearance	In Charging District 12/9/76	12/9/76	<input type="checkbox"/> G Plea W/Drawn <input checked="" type="checkbox"/> NG <input type="checkbox"/> G <input type="checkbox"/> NOL

SENTENCE

Disposition of Charges 12/9/76
☐ Convicted ☐ On All Charge
☐ Acquitted ☐ On Lesser Offense(s)
☐ Dismissed ☐ WOP ☐ On Government Motion

MAGISTRATE		INITIAL/NO	OUTCOME
Search Warrant Issued	DATE	INITIAL APPEARANCE DATE	<input type="checkbox"/> DISMISSED
Summons Issued	DATE	PRELIMINARY EXAMINATION	<input type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Arrest Warrant Issued	DATE	REMOVAL HEARING	<input type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Complaint	DATE	INTERVIEWING INDICTMENT	

U.S. Attorney or Asst.

Peter C. Dorsey, U.S. Atty.
Albert S. Dabrowski, Asst.
Thomas P. Smith, Asst.

ATTORNEYS

Richard Cramer

BROWN - 1

1976
9/17 Indictment, filed. Bench Warrant to issued as a
detainer. Bond set at \$100,000 full surety.
(Eagan, Mag.)
9/20 Bench Warrant issued and handed US Marshal.
9/21 Application For Writ of Habeas Corpus Ad Prosequendum
with Order of Court thereon, filed. (Blumenfeld, J.)
M.9-21-76. Two attested copies handed US Marshal
in Hartford.
9/24 Public Defender appointed to represent deft.
PLEA of not guilty entered to one count. Case
continued until October 26, 1976 for trial. CJA 23,
Financial Affidavit, filed. Notice of Readiness,
filed by Govt. (Eagan, Mag.)
9/30 Notice of Compliance With Local Rule 4 of the Speedy Trial
Act, filed.
10/8 Suppl. Notice of Compliance With Local Rule 4 of the
Speedy Trial Act, filed.
10/8 Motions For Discovery and Inspection, To Reveal
Identity of Informant, To Suppress Eyewitness Identification,
To Suppress Statements (Pursuant to F.R.C.P. 41(f), and To

DATE

DATE	PROCEEDINGS (continued)	Interval Action (a)	Start Date End Date (b)	LT Code (c)	Total Days (d)
10/8	Suppress Statements, filed.				
10/14	Hearing on oral motion for reduction of bond - Denied. (Eagan, Mag.)				
10/15	Magistrate's paper's filed...BRA Form No. 1,2 tapes. (Eagan, Mag.)				
10/15	Govt's. Opposition to Deft's. Motion For Discovery and Inspection and Govt.'s Preliminary Memorandum in Opposition to Deft. Arlo Lewis' Motion to Suppress, filed.				
10/21	Marshal's executed return, filed. (Warrant For Arrest of Deft.)				
10/27	Memorandum of Points and Authorities in Support of Pretrial Motions, filed.				
10/29	Motion For Release Under Speedy Trial Act, filed.				
11/2	Memorandum in Support of Motion for Release, filed.				
11/1	Govt's. Opposition to Motion For Release Under The Speedy Trial Act, filed.				
11/2	Second Supplemental Notice of Compliance With Local Rule 4 of The Speedy Trial Act, filed.		11/2/76	E	
11/2	Hearing on Motion to Reveal Identity of Informant Withdrawn. Motion to Suppress Eyewitness Identification & to Suppress Statements - Document provided by Govt. for In Camera review - Order Sealed by Court. Deft. Brown, present at counsel table, advised Court that he does not consent to being transferred to N.Y. re action in that jurisdiction. 5 deft. witnesses sworn & testified. Deft. sworn & testified. Deft. exh. #1 & #4 marked for identification. Deft. exh. #2, 3 & 5, filed. One Govt. witness sworn & testified. Govt. exh. A, B & C, filed. Continued until 11/7/76. Court adjourned at 4:45 p.m. (Blumenfeld, J.)				
11/3	Court Reporter's transcript of Proceedings held on November 2, 1976, filed in Hfd. (Collard, R.)				
11/4	Continued Suppression Hearing - Deft. exh. #6 thru 8A, filed. Govt. witness previously sworn, resumed stand & testified. Two Govt. witnesses sworn & testified. Govt. exh. D thru G, filed. One Deft. witness sworn & testified. Dec. Reserved. Court adjourned at 1:00 p.m. (Blumenfeld, J.)	3	11-4-76	E	2
11/5	Notice of Witnesses Govt. Intends to Call During its Case-in-Chief, filed.				
11/5	CJA 21 executed (Cramer, F.P.D.) and mailed to A.O. for payment.				
11/8	Govt's. Memorandum in Support of Opposition to Deft's. Motion For Release Under the Speedy Trial Act, filed.	3	11-8-76	E	
11/9	Court Reporter's transcripts of Proceedings held on November 2 and 4, 1976 (2 vols.) filed in Hartford. (Collard, R.)				
11/9	Marshal's executed return, filed. (Appl. For Writ of H.C.)				

FEE AND REGISTRATION PAYMENTS

DATE	RECEIPT NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELA		
		(a)	(b)	(c)
1976	(Document No.)			
11/11	Motion For One-Day Extension of Filing of Memorandum and Motion For Return of Exhibits, filed.			
11/12	Endorsement entered and filed on Motion For One-Day Extension, "O.K." (Blumenfeld, J.) M.11-12-76. Copies sent to counsel of record.			
11/12	Endorsement entered and filed on Motion For Return of Exhibits, "Motion granted. 11-12-76." (Blumenfeld, J.) M.11-12-76. Copies sent to counsel of record.			
11/12	Court Reporter's transcript of proceedings held on November 12, 1976, filed in Hartford. (Collard, R.)			
11/12	Hearing on Motion For Release - 2 deft. witnesses sworn and testified. Motion denied. (Blumenfeld, J.)	3	11/12/76 11/12/76	E S
11/15	Memorandum of Law in Support of Motion to Suppress, filed.	3		
11/15	Receipt from Dora Adams (F.P.D.'s. Office) re return of Deft. Exh. #1, filed.			
11/18	Government's Proposed Findings of Fact and Memorandum In Opposition To Defendant Arlo Lewis' Motions to Suppress, filed.	3	11-18-76	S
11/19	Court Reporter's transcript of proceedings held on November 12, 1976, filed in Hartford. (Collard, R.)			
12/9	Waiver of Indictment executed and filed. INFORMATION, filed. Intention to Enter a Guilty Plea filed. PLEA of guilty to one count Information, entered. Case continued on same bond for presentence report. Oral Motion of Def. to Suppress, Denied. Re: Def's. Motion to Suppress re Indictment No. H-76-97 and Def's. Motion For Release from Custody, Denied, written opinion to be filed. (Blumenfeld, J.)			
12/10	Court Reporter's notes of Proceedings held on Nov. 2, 1976, filed in Hartford. (Collard, R.)			
12/10	Court Reporter's notes of Proceedings held on Nov. 4, 1976 and November 12, 1976, filed in Hartford. (Collard, R.)			
1977				
1/3	RULING ON DEFENDANT'S PRE-TRIAL MOTIONS, filed. (Blumenfeld, J.) m-1/4/77 Copies sent to Attys. Cramer, Kennedy and Dabrowski. ".....defendant's motion for release from custody, denied - Defendant's motion to suppress statements he made while he was in custody is granted in part and denied in part. The statement made to Special Agent Willis and the statements to Detective Campbell are inadmissible because they were elicited in violation of the procedures outlined in Miranda v. Arizona, supra. The oral and written confession given to Special Agent Miller is fully admissible. It is SO ORDERED."			
1/3	DISPOSITION: three years imprisonment. Indictment H-76-97 dismissed by Court on Mo. of US Atty. (Blumenfeld, J.)			
1/5	Notice of Appeal, filed. Copies sent to counsel.			
1/6	Certified copies of Notice of Appeal and docket entries mailed to USCA.			

DATE 1977	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1/5	Judgment and Commitment Order, filed. (Blumenfeld, M.1-6-77. Two attested copies handed US Marshal and one attested copy handed US Probation Officer.				

Flight-Circumstantial Evidence

You have heard testimony that the defendant was arrested at LaGuardia Airport in New York in the airplane boarding area, two days after the robbery, and that at the time of his arrest, he falsely identified himself as "Willie Wright."

I instruct you that you may consider this in the course of your deliberations.

The intentional flight or concealment of a defendant immediately after the commission of a crime, or after he is accused of a crime that has been committed, is not of course sufficient in itself to establish his guilt; but is a fact which, if proved, may be considered by the jury in the light of all other evidence in the case, in determining guilt or innocence. Whether or not evidence of flight or concealment shows a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within the province of the jury.

Devitt & Blackman, § 11.18

United States of America vs.

United States District Court for

WAYNE BROWN

DISTRICT OF CONNECTICUT

DEFENDANT

DOCKET NO. Criminal H-76-97

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR

January 3, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Daniel H. Kennedy, Jr., Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

There being a ~~verdict~~ verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY, by the jury.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **violation of Title 18, Section 2113
of the United States Code (bank robbery) as charged in one count.**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **eight (8)** years.

SENTENCE
OR
PROBATION
ORDER

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

M. Joseph Blumenfeld
M. Joseph Blumenfeld

Date

1-5-77

CERTIFIED AS A TRUE COPY ON

THIS DATE

By

CLERK

DEPUTY

1 (A jury of twelve being duly impaneled, the
2 following occurred in the absence of the jury:)

3 THE COURT: All right.

4 MR. DABROWSKI: Just a few preliminary
5 matters, your Honor.

6 I would like to note, for the record, that
7 yesterday afternoon I turned over all of the
8 Jencks material with regard to all of the govern-
9 ment's witnesses we intend to call today and I
10 expect perhaps tomorrow - with one limited excep-
11 tion, that being some material I discovered last
12 night, about one a.m. I gave that to Mr. Kennedy
13 this morning.

14 In addition, I'll represent to the Court
15 that all of the rest of the Jencks Act material
16 will be given to Mr. Kennedy this afternoon.
17 So there shouldn't be a delay as a result of any
18 turnover of Jencks material.

19 THE COURT: Very well.

20 MR. DABROWSKI: In addition, involved in
21 this case were one search and a discovery of
22 evidence. The search involved a car owned by
23 Wayne Brown. Ten exhibits, ten items of evidence
24 taken from that car were marked as Grand Jury
25 exhibits and labeled Exhibits 1 through 10.

3
1 In addition, and within a few hundred yards
2 of the car, some other evidence was discovered;
3 specifically, another ten items. Those were
4 shown to the Grand Jury and marked as Government's
5 Exhibits 11 through 20 for the Grand Jury.

6 What I have done is premarked all of those
7 exhibits as trial exhibits for identification,
8 1 through 20. So that I may be showing exhibits
9 for identification to a witness somewhat out of
10 order, but that's the reason I did so.

11 In addition, through my second witness I
12 intend to attempt to introduce a film taken from
13 one of the automatic sequence cameras -- excuse
14 me -- a continuous sequence camera in the bank.

15 In order to make that film viewable, with
16 the consent of Mr. Kennedy last night I spliced
17 a lead onto the tape, so that there will be a
18 delay before the film actually trips in. In
19 order to do that, I had to destroy a portion of
20 the film, approximately a quarter of an inch to
21 a half inch in width, in length, of which I have
22 taped onto the box to preserve that.

23 In addition, I intend to introduce photo-
24 graphic -- a photograph was made of each frame in
25 the film. I have a still photograph of every frame

1 in the motion picture. I intend to introduce
2 that.

3 When that was being done by Distribution
4 Associates in New Haven, Connecticut they inad-
5 vertently cut the film.

6 THE COURT: They what?

7 MR. DABROWSKI: Cut the film.

8 I respliced that myself, last night, together
9 and this portion, the larger portion up here,
10 represents a portion that I had to take out of
11 the film as a result of that cut in their taping
12 job.

13 They just took some heavy tape and taped it
14 back together, because they didn't intend to re-
15 play it. Their function, they thought, was just
16 to provide us with photographic still shots of
17 each frame. So that those two on the box --
18 I'm providing Mr. Kennedy with advance notice
19 that that's what those are. And I did give him
20 notice, and he did not object to my doing what
21 I did with that film in order to make it viewable.

22 I assume he's going to reserve some objection
23 to its basic admissibility.

24 THE COURT: What?

25 MR. DABROWSKI: I believe he's going to object

1 to the admissibility of the film. But on some
2 other ground, other than the fact that I may have
3 tampered with it.

4 THE COURT: All right.

5 MR. DABROWSKI: In addition, Mr. Templeton
6 was talking to me just a few moments ago and he
7 raised the problem of showing exhibits marked
8 for identification to any particular witness.

9 I intend to show a number of exhibits, one
10 through 20, in addition to Exhibits through my
11 first witness and many other witnesses. I don't
12 intend to introduce those items, or attempt to
13 have them marked or introduced as full exhibits
14 until some later point in the trial.

15 My custom in trying cases before this Court
16 and in the South Courtroom has always been to
17 just show a witness an exhibit marked for iden-
18 tification.

19 Mr. Templeton indicated that because of the
20 number of exhibits and, in particular, with regard
21 to this exhibit, a .32 caliber revolver -- excuse
22 me -- a .38 caliber Police Special revolver, which
23 I intend to have marked as Government's Exhibit 21,
24 he pointed out that he thought the Court would
25 object to my showing this, and perhaps other ex-

1 hibits, to any witness in front of the jury prior
2 to their having been marked as full exhibits.

3 I perhaps am misstating --

4 THE CLERK: Prior to the Court's approval.

5 MR. DABROWSKI: Prior to the Court's approval.

6 I'm just advising the Court that what I intend
7 to do is show a number of items marked for iden-
8 tification to the witness, for the primary purpose
9 of seeing if they can identify it.

10 THE COURT: Right. You have to identify them.

11 MR. DABROWSKI: If they can identify it and
12 then if I can later link it to the defendant, I
13 will move for its full admissibility.

14 THE COURT: Right.

15 MR. KENNEDY: Well, on any of the items,
16 there are a few items here that could be tied in
17 through testimony possibly or could give the
18 appearance of the defendant being involved in
19 other criminal activity.

20 If Mr. Dabrowski - and he knows which exhibits
21 those are - if he intends to offer any exhibit
22 which would so indicate prior criminal activity
23 or other criminal activity along these lines, I
24 would hope that he would advise me and I would
25 like to have a parol offer by him, in the absence

1 of the jury.

2 The gun, for example, was not a product of
3 investigation on this particular offense. This
4 was from another jurisdiction and another offense.

5 The admissibility of that, when he goes to
6 introduce it, is going to be a problem, from my
7 point of view. Therefore, I'm just saying this
8 so that an argument on admissibility of the gun,
9 and there's also a bank book found in the auto-
10 mobile - I don't even know if he's intending to
11 introduce some of these items, but I would like
12 them offered in the absence of the jury, so we
13 get a parol offer on them.

14 MR. DABROWSKI: We will offer them as full
15 exhibits.

16 I think any argument on the offer of whether
17 an item should be accepted as a full exhibit might
18 very well be conducted out of the presence of the
19 jury. I don't think I should be required to make
20 my offer, you know, "I hereby offer Government's
21 Exhibit 26 as a full exhibit." I don't think
22 that's necessary.

23 MR. KENNEDY: No, I'm not saying that.

24 I'm just pointing that out.

25 THE COURT: Are we ready now?

1 MR. DABROWSKI: The Government is ready.

2 THE COURT: Do you have your first witness
3 here?

4 MR. DABROWSKI: Yes, your Honor.

5 THE COURT: Call the jury.

6 (In the presence of the jury:)

7 THE COURT: All right.

8 The Government will call its first witness.

9 MR. DABROWSKI: The Government calls Mae
10 Johnson.

1 M A E J O H N S O N, called as
2 a witness, being first duly sworn, was examined,
3 and testified as follows:

4 THE CLERK: Will you state your name, for
5 the Court.

6 THE WITNESS: Mae Pollard Johnson.

7 THE CLERK: And your address, Miss Johnson?

8 THE WITNESS: 328-C Park Avenue, East Hartford.

9 THE CLERK: East Hartford, Connecticut?

10 THE WITNESS: Yes.

11 THE CLERK: Thank you.

12 Please speak loudly and clearly so that
13 everyone can hear you.

14 THE COURT: All right.

15 DIRECT EXAMINATION

16 BY MR. DABROWSKI:

17 Q Mrs. Johnson, are you employed?

18 A No.

19 Q Were you employed on July 10th of 1976?

20 A Yes.

21 Q Would you tell the ladies and gentlemen of the
22 jury just where you were employed?

23 A United Bank & Trust at 494 Windsor Avenue in
24 Windsor.

25 Q That's called the Windsor Avenue Branch of the

1 United Bank & Trust Company?

2 A Windsor Branch.

3 Q Now, directing your attention to approximately
4 eleven a.m. on the morning of July 10th, 1976, you were
5 present in the bank, is that correct?

6 A Yes.

7 Q Do you recall who else was present in the bank at
8 that time?

9 A There was another teller, Linda DePascale, and
10 my boss, Joe Lupacchino, and about five or six --

11 THE COURT: Linda who?

12 THE WITNESS: Joe Lupacchino, my boss.

13 THE COURT: Joe Pacchino, your boss?

14 THE WITNESS: Lupacchino.

15 THE COURT: Spell it.

16 THE WITNESS: L-u-p-a-c-c-h-i-n-o. And about
17 five or six customers.

18 THE COURT: Linda who?

19 THE WITNESS: DePascale.

20 THE COURT: DePascale. She was another
21 teller, and Joe Lupacchino was the boss. And
22 five or six customers?

23 THE WITNESS: Yes.

24 THE COURT: Can you hear back there, Mr.
25 Gediman? And Mr. Cohen?

1 MR. COHEN: Yes.

2 THE COURT: Mrs. Studwell, can you hear all
3 right?

4 MRS. STUDWELL: Yes.

5 THE COURT: Go ahead.

6 BY MR. DABROWSKI:

7 Q Linda DePascale was a teller?

8 A Yes.

9 Q What was your function at the bank?

10 A A teller.

11 Q And what was Mr. Lupacchino's function at the bank?

12 A The manager.

13 Q Now, where in the bank were you located?

14 A Behind the teller's counter. I was working the
15 drive-in window.

16 Q Now, where was Mr. Lupacchino located?

17 A At his desk.

18 Q And is that behind the teller's counter?

19 A No. That's in the lobby.

20 Q And how about Linda - where was she located?

21 A At her teller's station, behind the counter.

22 Q Now, is there any reason why you're no longer
23 working at the bank?

24 A I was pregnant at the time.

25 Q How many months pregnant were you?

1 A Eight months.

2 Q And you've since had a baby?

3 A Yes.

4 Q Now, again directing your attention to approx-
5 imately eleven a.m. on the morning of July 10th, 1976, did
6 anything unusual happen at that time?

7 A We were robbed.

8 Q What do you mean by "robbed"?

9 A Two black males came into the bank and held us up.

10 Q In addition to the employees, were there any
11 other customers or was anybody else in the bank?

12 A There were about five or six customers in the bank.

13 Q And these customers were, I assume, on the other
14 side of the counter from where you were?

15 A Yes.

16 Q Now, when is the first time you knew the bank was
17 being robbed, and why did you know it was being robbed?

18 A I didn't see them come in, but I had just finished
19 waiting on one of our customers and one of them said:
20 "Everybody freeze," in a real loud voice. So we all froze.
21 And that's when I first knew.

22 THE COURT: You what? What did you do?

23 THE WITNESS: We froze.

24 THE COURT: You froze.

25 "Everybody freeze." And you froze.

1 A That was the first time that I knew.

2 Q (By Mr. Dabrowski) Now, you said one of them
3 said?

4 A Yes.

5 Q Could you describe this particular individual,
6 the one who said: "Everybody freeze"?

7 A He was the one who was holding a gun.

8 THE COURT: He was holding a gun?

9 THE WITNESS: Yes.

10 THE COURT: Yes.

11 A He was wearing a blue denim hat and glasses.

12 Q (By Mr. Dabrowski) Do you recall how tall he was?

13 A About five, seven.

14 Q Was he fat, thin?

15 A He had a medium build.

16 Q And you said he had on a blue denim hat?

17 A Yes.

18 Q And glasses?

19 A Yes.

20 Q Do you recall anything else about his clothing?

21 A No.

22 Q Now, concentrating on that particular individual,
23 where did he go and what did he do in the bank, in your
24 presence?

25 A He was located at a point that was close to the

1 drive-in window. It was -- the counter on the lobby is
2 shaped like this. This is the high point and this is the
3 low point. And he was in the corner right here (indicating).

4 Q Although not similar in height, but the jury rail
5 here, assuming that's the counter of the bank, is it fair
6 to say that the teller area is on the other side where the
7 jury is?

8 A Yes.

9 Q And were you back there?

10 A Yes.

11 Q Where's the main entrance? Where's the door from
12 which they came in?

13 A From that point it would be over here by the flag.

14 Q And where were you?

15 A Well, I was about the third person from the end
16 there (indicating).

17 Q Right here?

18 A Yes.

19 Q And where's the drive-in teller's window?

20 A It's located about where the door is, the exit door.

21 Q Where would Mr. Lupacchino's desk be in relation
22 to this physical --

23 A The desk over there (indicating).

24 Q Now, where did the individual who had the gun and
25 the blue denim hat, where did he go and what did he say?

1 Where did he stand in relation to this diagram?

2 A He went down to the far corner.

3 THE COURT: Of the counter?

4 A Of the counter. So that he was facing us, but,
5 you know, like I said, the drive-in window would be right
6 at that end, in back of it. And he was facing us at that
7 corner.

8 Q How far away from the gunman, the fellow with the
9 gun, were you?

10 A About six to eight feet away.

11 Q Now, he went down to that area. What did he say?

12 A He said: "Everybody freeze." And I was staring
13 at him, and then he said: "Hit the floor, bitch."

14 THE COURT: He what?

15 THE WITNESS: He said: "Hit the floor, bitch."

16 THE COURT: "Hit the floor"?

17 THE WITNESS: "Bitch." To me.

18 THE COURT: Yes.

19 A And then he said: "Everybody on the floor."

20 BY MR. DABROWSKI:

21 Q What did he do with the gun?

22 A He was pointing it at me. And then I don't know
23 who he pointed it at after that.

24 Q Now, what happened to -- there was someone else
25 with him, right?

1 A Yes.

2 Q What happened to that person?

3 A He had jumped over the counter.

4 Q Whereabouts did he jump?

5 A At that low point, at the end of the counter there.

6 The same area where the gunman was. He had
7 jumped over from that side.

8 Q Now, did you see him at any time prior to the
9 time he jumped over the counter?

10 A No.

11 Q So your first awareness of the second bank robber
12 was basically when he came over the counter?

13 A Right.

14 Q How close to that bank robber were you?

15 A At the closest point, about three feet.

16 Q What did he do after he came over the counter?

17 A He started opening up the teller drawers.

18 Q And do you recall how many teller drawers?

19 A He opened three teller drawers.

20 Q Now, where was he when the gunman yelled at you:
21 "Hit the froot, bitch"?

22 A He was jumping over the counter -- no. At that
23 point? He was already opening up the drawers. And I think
24 at that exact moment he was already at Linda's window.

25 THE COURT: Already what?

1 THE WITNESS: At Linda's window, taking out
2 the money.

3 THE COURT: You're talking about the second
4 man?

5 THE WITNESS: No --

6 THE COURT: The man with the denim hat?

7 THE WITNESS: I don't know.

8 BY MR. DABROWSKI:

9 Q Are you talking about the man who jumped over the
10 counter?

11 A The man who jumped. Yes.

12 You mean how far away was I from he at that point?

13 THE COURT: No.

14 You said that the second man jumped over the
15 counter and started opening the teller drawers,
16 and he opened three drawers.

17 THE WITNESS: Right.

18 THE COURT: Then the question is what did the
19 other man -- what was he doing. Did you see him?

20 THE WITNESS: Yes.

21 THE COURT: Do anything then?

22 THE WITNESS: The gunman then, the first man?

23 THE COURT: Yes.

24 THE WITNESS: Yes. He had the gun on every-
25 body and at this point he had told us all to get

1 on the floor.

2 THE COURT: Right.

3 THE WITNESS: While the second man was taking
4 the money out of the drawer.

5 THE COURT: Yes.

6 THE WITNESS: So we were all on the floor at
7 this point.

8 THE COURT: All right.

9 Put a question.

10 BY MR. DABROWSKI:

11 Q Then what happened?

12 A Then the second man, the one who was taking the
13 money and putting it into the briefcase, jumped back over
14 the counter and left. And I don't know how they left, be-
15 cause I was on the floor.

16 Q Now, did you see what direction they went in when
17 they left the bank?

18 A No.

19 Q You were down --

20 A I was behind the counter, on the floor.

21 Q During this bank robbery were you scared?

22 A Yes.

23 Q I'm showing you Government's Exhibit 1 marked for
24 identification.

25 MR. DABROWSKI: Your Honor, each of these

1 exhibits bears an evidence tag. Many of them
2 were presented before the Grand Jury. Mr. Kennedy
3 has indicated that he may want to clip that evi-
4 dence tag off in certain instances.

5 MR. KENNEDY: Yes, I think this is one of
6 those instances.

7 THE COURT: All right.

8 MR. KENNEDY: I'd like the tag describing
9 what it is, the Grand Jury tag, be taken off the
10 exhibit before they are handed to the witness,
11 your Honor.

12 MR. DABROWSKI: My only reason in leaving
13 them on, your Honor, was the chain of custody
14 problem in establishing, of course --

15 THE COURT: Right.

16 MR. DABROWSKI: However, I would note that
17 each of the documents which are marked as Grand
18 Jury exhibits are marked by the same number as
19 Government trial exhibits.

20 So Grand Jury Exhibit 1 is Government's
21 Trial Exhibit for identification 1.

22 THE COURT: All right.

23 (Pause)

24 BY MR. DABROWSKI:

25 Q I'm showing you Government's Exhibit 1 for identi-

1 fication. Do you recognize those glasses?

2 A No.

3 Q I'm showing you Government's Exhibit No. 2 for
4 identification. Do you recognize that?

5 A It looks very much like the hat I saw. I thought
6 the hat that the gunman was wearing was lighter in color
7 than that hat. But, otherwise, it was the same.

8 Q Now, in what ways, what do you mean it was the
9 same?

10 A The whole style of the hat and the fact that it
11 was blue denim. I just thought it was lighter in color.

12 Q You recall the hat that was being worn by the
13 gunman was lighter in color than that one?

14 A Yes.

15 Q Can you eliminate that hat as the hat worn by the
16 gunman?

17 A No.

18 Q Showing you Government's Exhibit No. 3 marked for
19 identification, do you recognize that tie?

20 A No.

21 Q Showing you Government's Exhibit 13 marked for
22 identification, do you recognize that tie?

23 A No.

24 Q Showing you Government's Exhibit 16 marked for
25 identification, do you recognize those?

1 A No.

2 Q Showing you Government's Exhibit 15 marked for
3 identification, do you recognize those?

4 A No.

5 Q Showing you Government's Exhibit 14 marked for
6 identification, do you recognize that?

7 A Yes.

8 Q Showing you Government's Exhibit 20 marked for
9 identification, do you recognize that?

10 A No.

11 Q Now, what is it about Government's Exhibit No. 14
12 that you recognize?

13 A It is the shirt that the man with the briefcase
14 was wearing.

15 Q The gunman, or the one who jumped the counter?

16 A The one who jumped the counter.

17 Q Now, with regard to the other items that you did
18 not identify, are you saying that the robbers in the bank
19 on July 10th did not wear those clothes, or you just don't
20 remember them?

21 A I don't remember them. They didn't stand out.

22 Q But you do remember this shirt as being a shirt
23 worn by the individual who vaulted the counter?

24 A Yes.

25 Q I'm showing you two briefcases, one in my right

1 hand and one in my left hand.

2 In my left hand is Government's Exhibit for iden-
3 tification No. 12, and in my right hand is No. 11. Do you
4 recognize either one of these cases?

5 A The black one.

6 Q The one in my left hand?

7 A Yes.

8 Q How do you recognize that? What is it? Have you
9 ever seen it before?

10 A Yes. That was the briefcase that the money was
11 put into.

12 Q Which one of the robbers put the money into the
13 briefcase?

14 A The one who vaulted the counter, who was wearing
15 the purple shirt.

16 Q Now, are you absolutely sure that that's the brief-
17 case?

18 A Yes.

19 Q You didn't see which one of the robbers brought
20 this briefcase into the bank?

21 A No.

22 Q Showing you Government's Exhibit 21 marked for
23 identification, do you recognize that?

24 A May I pick it up?

25 Q Yes.

1 A That looks like the gun the gunman held.

2 THE COURT: What is the number?

3 MR. DABROWSKI: 21 for identification, your
4 Honor.

5 Q When you say it looks like the gun the gunman held,
6 describe for us the gun that the gunman had, that the gunman
7 held.

8 A It was a short black gun.

9 Q Was it a revolver? Could you see the bullets in
10 it?

11 A I didn't see the bullets, but I was quite sure it
12 had the -- I don't know what you call that (indicating).

13 Q A cylinder? This here (indicating)?

14 A Yes. I was quite sure it had that in the gun.

15 Q Is there any other way in which the gun held by
16 the gunman on that date was similar to this one?

17 A Just that the gun was short.

18 Q By "short" do you mean the length of the barrel,
19 or the overall length of the gun?

20 A Well, I couldn't see the handle, but the barrel
21 itself was short.

22 Q Was it shorter than or longer than this, or the
23 same length?

24 A It could have been a little longer.

25 Q Now, which way was the gun that the gunman held

1 pointed at you? Did you get a side view of it, or did you
2 get a view of it pointed right at you?

3 A Front view; pointed right at me.

4 Q So you can't say with absolute certainty as to
5 exactly what the length of the barrel was because you didn't
6 see it from a complete side view, is that correct?

7 A Correct.

8 Q Mrs. Johnson, would you look around this courtroom
9 and would you tell the ladies and gentlemen of the jury if
10 either one of the robbers who entered and robbed the United
11 Bank & Trust Company on July 10th, 1976, is present in the
12 courtroom today?

13 A I couldn't be sure.

14 Q Well, is there anyone in this courtroom that
15 resembles either one of the robbers?

16 MR. KENNEDY: Your Honor, I'm going to object
17 to that question.

18 A I don't know.

19 MR. KENNEDY: Whether or not someone resembles
20 the robbers. I think the question has to be made
21 more specific. In what particular way.

22 She has already testified that --

23 MR. DABROWSKI: I will withdraw the question.

24 Q What do you mean when you say you're not sure?

25 A Well, because the person that was holding the gun

1 was wearing the hat and the sunglasses and had a mustache.

2 THE COURT: Wearing the hat and sunglasses?

3 THE WITNESS: And sunglasses, and a mustache.

4 THE COURT: And a mustache.

5 THE WITNESS: So I couldn't make a positive
6 identification.

7 BY MR. DABROWSKI:

8 Q Well, "couldn't." How about right now? Can you
9 identify either one of the robbers that robbed the bank on
10 July 10th as being present in this courtroom today?

11 A No, not positively.

12 Q Are you saying he's not here?

13 A No.

14 Q But you can't positively identify anybody?

15 A Right.

16 Q I'm showing you Government's Exhibit 19 a
17 Government's Exhibit 18 marked for identification. Do you
18 recognize either one of those items?

19 First, Government Exhibit 19?

20 A Yes. It's a money strap.

21 Q Well, is it a money strap that you've seen before?

22 A Yes. They're United Bank's money straps that we
23 use at our office.

24 Q And does this particular one relate to any denomina-
25 tion?

1 A That one's not used too frequently.

2 THE COURT: What's that?

3 THE WITNESS: It's not used too frequently.

4 I don't know what it could have been used on.

5 BY MR. DABROWSKI:

6 Q Well, what is the significance of the "Hundred"?

7 A For the hundred dollars.

8 Q This strap would have gone around a roll of hundred
9 dollar bills?

10 THE COURT: A hundred dollar bills, or --

11 THE WITNESS: Or twenties, or fives, or any-
12 thing.

13 THE COURT: An amount --

14 THE WITNESS: Totaling a hundred dollars.

15 THE COURT: Totaling a hundred dollars.

16 All right.

17 BY MR. DABROWSKI:

18 Q Now, showing you Government's Exhibit 18 marked
19 for identification - your Honor, there are two items in this
20 packet; one is a matchbook and the other again is a bank
21 money strap - do you recognize either one of those?

22 A The strap.

23 Q How do you recognize that and what is it?

24 A It's the United Bank teller's strap for five
25 hundred dollars.

1 Q And is it not only the United Bank teller's strap,
2 but is it the Windsor office's?

3 A Yes.

4 Q So it's your branch office's strap?

5 A Yes.

6 MR. DABROWSKI: I have no further questions
7 of this witness, your Honor.

8 CROSS-EXAMINATION

9 BY MR. KENNEDY:

10 Q Mrs. Johnson, now let's go back to your Direct
11 testimony. Where were you when you first noticed the man,
12 either of the robbers?

13 A Behind the teller's counter. I was near the
14 savings machine, but you wouldn't know where that is.

15 Q Now, near the savings machine - which end of the
16 bank is this on, the extreme end from the front entrance?

17 A Where I was located? I was located between the
18 center and the extreme end.

19 Q Where was the man with the gun standing?

20 A At the extreme end.

21 Q Okay. Now, how far away from you was he?

22 A About six to eight feet.

23 Q Was he as far as I am from you?

24 A No. He was closer.

25 Q Closer.

1 Now, how long from the time that they came in
2 until the time you hit the floor? How many seconds went by?

3 A I don't know.

4 Q Three or four seconds? Five or six seconds?

5 A No. It was longer than that.

6 Q Do you think maybe ten-twelve seconds?

7 A It was more. It was longer than that.

8 Q Half a minute?

9 A Maybe twenty seconds to a half a minute.

10 Q Now, during that time who were you looking at?
11 Were you looking at the suspect with the gun in his hand,
12 or the man that was vaulting the counter?

13 A The one with the gun.

14 Q And did you remain looking at him primarily?

15 A No. I did switch my gaze to the one wearing the
16 shirt. That's how I recognized his shirt.

17 Q Okay. But most of the time you were looking at
18 the man holding the gun?

19 A I was looking at the gun.

20 Q And then who said "Hit the floor," the man with
21 the gun?

22 A Yes.

23 Q And you did?

24 A Yes.

25 Q Did you see anything after you hit the floor?

1 A No.

2 Q You couldn't see anything then.

3 Now you testified, I believe, you thought the man
4 was approximately five, seven, the man holding the gun.

5 A Yes.

6 Q How much did you think he weighed?

7 A About 140.

8 Q Okay. Now, do you think he was wearing glasses?

9 A Yes.

10 Q Did you think the glasses had wire rims?

11 A Yes, I did.

12 THE COURT: What kind of rims?

13 MR. KENNEDY: Wire rims.

14 Q (By Mr. Kennedy) Now, I show you Government
15 Exhibit 1. I take it these are the glasses that Mr.
16 Dabrowski showed you before.

17 A Yes.

18 Q These don't have wire rims, do they?

19 A No.

20 Q These don't look like those glasses, do they?

21 A I don't know.

22 Q Well, they don't have wire rims?

23 A No.

24 THE COURT: What's that?

25 MR. KENNEDY: This is Government's Exhibit

1 for identification.

2 THE COURT: Exhibit 1?

3 MR. KENNEDY: 1, your Honor.

4 Q Now, did there come a time after these events of
5 July 10th that you were interviewed by any law enforcement
6 authorities?

7 A Yes, I was.

8 Q Do you remember when that was?

9 A Well, they came in shortly after the robbery,
10 because the door was locked and they came in. I don't know
11 how long it took them to get there - ten, fifteen minutes.

12 Q Well, it was the same day as the robbery?

13 A Oh, yes.

14 Q Do you remember who spoke to you?

15 A I don't remember their names.

16 Q FBI agents?

17 A Yes.

18 Q Were there also perhaps Windsor police?

19 A Yes, there was, because I think I gave like four
20 statements that day; three or four.

21 Q And did they show you any series of photographs?

22 A At that time?

23 Q Yes.

24 A No.

25 Q They just asked you for your description?

1 A Yes.

2 Q And you gave them primarily the description you
3 have given us this morning?

4 A Yes.

5 Q Now, did there come a time subsequent to that day
6 when you spoke to the police that you were shown a group of
7 photographs?

8 A Yes.

9 Q Do you want to tell us about that?

10 A I was called down to the police station to look at
11 some mug shots.

12 Q When was this?

13 A Maybe three weeks later or so. Two or three weeks.
14 I can't remember.

15 Q And were you left in a room alone with the photo-
16 graphs, with the police officers standing next to you or
17 sitting next to you? What happened?

18 A I think there was -- well, there was one still in
19 the room with me.

20 Q Okay. What did he say? Did he tell you to look
21 at the photographs?

22 A Yes, he asked me if I could identify anyone in
23 those pictures.

24 Q Now, did you go through the photographs?

25 A Yes.

1 Q And were you shown one spread of photographs, or
2 were there more than one?

3 A I think on two separate occasions I was shown two
4 spreads.

5 Q Were they different spreads?

6 A I don't know.

7 Q You mean the two separate occasions another day?

8 A Yes, I'm pretty sure I had to go back another time
9 to look at photographs.

10 Q Now, in the one or two occasions when you looked
11 at the photographs were you able to pick out anyone as
12 identical to the person that you saw in the bank on July 10th?

13 A No.

14 Q Now, referring you to Government's Exhibit for
15 identification No. 2, this blue hat, how much lighter do
16 you think the hat was?

17 A It was just a lighter blue denim.

18 Q It was a light shade of blue?

19 A Lighter. It wasn't, you know, light light. But
20 I just thought it was lighter than that. Like it was faded
21 denim.

22 Q Like a baby blue color?

23 A No.

24 Q Not that light?

25 A No.

1 Q A denim color, but lighter than this.

2 Okay. Now, Mr. Dabrowski showed you this gun
3 marked Government's Exhibit 21 for identification. And
4 your testimony, I believe, Mrs. Johnson, was that you're
5 not sure if that's the gun used in the robbery or not, is
6 that a fair statement of what you said?

7 A Yes, I couldn't be positive.

8 Q Okay. Now, you said the gun could have been
9 longer than this gun. I didn't quite understand what you
10 meant. You mean the barrel of the gun up here could have
11 been longer?

12 A It could have been.

13 Q Well, could the gun just have been a longer gun,
14 a bigger gun?

15 A No, because it was a small gun. I do remember it
16 being small.

17 Q It was a small gun, but it could have been a
18 longer barrel?

19 A Yes.

20 Q But it is a fair statement to say that you really
21 can't say if this is the gun or not?

22 A Yes.

23 Q Now, the money straps, you were shown Government
24 Exhibit 19, the money strap with the hundred dollars on it.
25 That money strap could have been used on twenties or fives?

1 A Or, you know, it could have been for ten 10's, too.

2 Q You could have used that for anything?

3 A Yes. It's not used that often because it doesn't
4 involve that many bills, you know, to wrap up.

5 Q So I take it that if you need a strap and you have
6 20's you may have used it for that?

7 A It could also be used one hundred \$1.00 bills,
8 which is its prime purpose.

9 MR. KENNEDY: I have nothing further, your
10 Honor.

11 MR. DABROWSKI: I have nothing further, your
12 Honor, from this witness.

13 THE COURT: Just a minute.

14 I guess Mrs. Johnson then may be excused?

15 MR. DABROWSKI: Yes, your Honor.

16 MR. KENNEDY: Yes, your Honor.

17 THE COURT: May be excused.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 THE COURT: How long is your next witness
21 going to take?

22 MR. DABROWSKI: My next witness will be rather
23 lengthy, your Honor. I'm going to call Mr. Joseph
24 Lupacchino, the manager of the bank.

25 THE COURT: Well, why don't we start fresh

1 with him after lunch.

2 MR. DABROWSKI: Before the Court recesses,
3 but after the Court excuses the jury, there is
4 one problem with Mr. Lupacchino.

5 THE COURT: Let me excuse the jury, then.

6 We are going to excuse you now for lunch until
7 two o'clock. You've been sworn as jurors and I
8 remind you that part of the oath you took was
9 that your own counsel and that of your fellows
10 you will duly observe and keep.

11 What it means is that you are not to talk
12 about the case to anyone, you are not supposed
13 to talk about it among yourselves, and you are
14 certainly not permitted to let anyone talk to
15 you about it.

16 I don't think anyone will. But if that
17 should happen, just make a mental note so that
18 you can identify that person, and let me know
19 about it.

20 All right. You are excused now till two
21 o'clock.

22 (In the absence of the jury:)

23 THE COURT: All right.

24 MR. DABROWSKI: Your Honor, I had intended
25 to call Mrs. Johnson after Mr. Lupacchino, but

1 Mrs. Johnson has a problem with her baby and
2 that's why I put her on first.

3 THE COURT: I see.

4 MR. DABROWSKI: Through Mr. Lupacchino I
5 intend to introduce a number of items, including
6 a motion picture film of the bank.

7 THE COURT: Yes.

8 MR. DABROWSKI: Now, what Mr. Lupacchino
9 has done this morning is he viewed that film in
10 my office and is prepared to testify that that
11 film depicts the events which he observed, or
12 at least part of the events which he observed
13 on July 10th in his bank, accurately.

14 And assuming he testifies in that manner,
15 I intend to introduce the film as a full exhibit
16 and attempt or request permission of the Court
17 to play it, to show it to the jury.

18 Mr. Kennedy has indicated he has an objection.

19 THE COURT: He has objection?

20 MR. KENNEDY: Yes.

21 My objection is this, your Honor. I have no
22 doubt that perhaps Mr. Dabrowski would be able to
23 get this evidence in through other witnesses.

24 THE COURT: Yes.

25 MR. KENNEDY: My objection comes to getting

1 it in through the bank manager.

2 Due to the fact that this film is a film
3 that is -- I'm not sure if it's the property
4 or if it's just in their possession, but I don't
5 believe it is the property of the bank. I be-
6 lieve it is the property and is serviced by the
7 A.D.T. Corporation.

8 Mr. Lupacchino has nothing to do with running
9 that film. He just happens to be the manager.

10 THE COURT: All right.

11 MR. KENNEDY: The other problem, of course,
12 is that the film was developed, I believe, by
13 the FBI agent.

14 MR. DABROWSKI: The film was not developed,
15 your Honor. This is a negative. It has never
16 been developed.

17 MR. KENNEDY: There were photos taken from
18 the film, and the film was spliced, and other
19 things were done to it. But these were done by
20 either Mr. Dabrowski or the FBI agent. Mr.
21 Lupacchino had nothing to do with that film.

22 THE COURT: Well, it has to be developed
23 even as a negative, doesn't it?

24 MR. DABROWSKI: No. Your Honor, I inquired --

25 THE COURT: Is it self-developing?

1 MR. DABROWSKI: No, your Honor.

2 I inquired of Distribution Associates in New
3 Haven and they advised me that the form in which
4 I have the film at the present time is the best
5 possible way to show it.

6 THE COURT: I'm not talking about that.

7 Is that the form it was in when it came out
8 of the machine, or wherever it came out of - out
9 of the camera?

10 MR. KENNEDY: I believe it has been processed.

11 THE COURT: What?

12 MR. DABROWSKI: It has been processed, your
13 Honor.

14 THE COURT: All right.

15 MR. DABROWSKI: But it's not the normal home
16 movie, where --

17 THE COURT: No.

18 All right. It has been processed.

19 MR. KENNEDY: So my point is that it has to
20 be authenticated, and the authentication can't
21 come from Mr. Lupacchino because all Mr. Lupa-
22 cchino knows is that there was a camera in the
23 bank that day, he's been shown the pictures, and
24 he will say, perhaps, that looks like what happened
25 in my bank. But that's not the proper way to get

1 the film in. That's my objection.

2 MR. DABROWSKI: Two things, your Honor.
3 Number one, Special Agent Harry Willis accom-
4 panied that film down to Distribution Associates,
5 along with --

6 THE COURT: Are you going to have him testify?

7 MR. DABROWSKI: I can.

8 Also Detective Larry Overstrom went with him,
9 your Honor.

10 THE COURT: That he took it out of the machine
11 and took it down --

12 MR. DABROWSKI: Or someone in his presence
13 took it out, handed it to he and Detective Over-
14 strom, they went down to New Haven and it was
15 developed.

16 THE COURT: Processed it, and this is the film?

17 MR. DABROWSKI: That's correct, your Honor.

18 THE COURT: All right.

19 MR. DABROWSKI: In addition, there's a
20 separate reason for introducing into evidence,
21 regardless of what the chain of custody with
22 regard to the exhibit was.

23 Mr. Lupacchino is prepared to say he just
24 looked at that and right now, to the best of his
25 recollection, that's an accurate recording of what

1 happened.

2 THE COURT: All right.

3 MR. DABROWSKI: So regardless of where the
4 film came from, here is an item which is an
5 accurate recording.

6 THE COURT: All right.

7 MR. KENNEDY: I'm just saying that despite
8 the fact that the film may be an accurate report-
9 ing, he needs more to authenticate it, to get it
10 in.

11 THE COURT: It's a question that the Court
12 will be able to pass upon.

13 You know, I think in a thorough preparation
14 he would be prepared to meet your objection by
15 further evidence. He has some he has through Mr.
16 Willis, and he promises to offer that.

17 All right. Recess till two o'clock.

18 (Luncheon recess.)
19
20
21
22
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25

AFTERNOON SESSION

(In the absence of the jury:)

THE COURT: You wanted to address the Court about a matter that occurred outside the presence of the Court, did you, or not?

Have you thought it over?

MR. KENNEDY: Yes, your Honor.

Mr. Dabrowski brought to my attention that a witness in this case, a police officer from the Town of Windsor, noticed that he knew one of the jurors, and I take it that they had some type of conversation, but unknown as to the extent of that.

I would like whatever did occur, I would like the Court to inquire of that juror.

Of course, I don't know who that juror is and I don't think Mr. Dabrowski does, either.

MR. DABROWSKI: Your Honor, so the record will be clear, Detective Gasparino from the Windsor Police Department, who will be a Government witness in the case, came up to me in the hall after the luncheon recess and advised me that an individual he thinks is a juror in this case, whose name he doesn't know, came up to him and basically said hello to him. He now thinks

1 he recognizes the face as being an individual
2 who he's seen in coffee shops in the Windsor
3 area and who he thinks may know him as a police
4 officer.

5 He did not say he was a friend of the juror,
6 he did not say there was any lengthy conversation;
7 but he thought it was appropriate to bring it to
8 my attention. And that's what I advised Mr.
9 Kennedy.

10 MR. KENNEDY: I think inquiry should be made
11 of the juror and I think, secondly, it should be
12 inquired, whatever the juror tells us, whether
13 or not he transferred that information to the
14 rest of the jury.

15 Additionally, I think that if his answer is
16 that he knows Detective Gasparino in a sense
17 that may make him a biased witness at all, I'm
18 not asking for a mistrial, but I think if some-
19 thing like that occurs we ought to replace him
20 with an alternate.

21 If he's saying that he knows Detective
22 Gasparino to the point where he possibly could
23 be biased in this case, I'd ask that he be re-
24 placed with an alternate.

25 THE COURT: You would ask that he what?

1 MR. KENNEDY: Be replaced with the first
2 alternate juror. But I think an inquiry ought
3 to be made.

4 THE COURT: We don't know who we want to
5 talk to.

6 MR. KENNEDY: That's correct.

7 THE COURT: Do we?

8 MR. KENNEDY: Perhaps they could be brought
9 in and Detective Gasparino --

10 THE COURT: Is there anything to show that
11 you have, Mr. Templeton, as to whether any of
12 these jurors are from Windsor?

13 THE CLERK: We can get the jury questionnaires,
14 your Honor.

15 MR. KENNEDY: I can tell you that right now,
16 your Honor. There is one juror.

17 THE COURT: On this panel from Windsor?

18 MR. KENNEDY: Clifford Zukowski, No. 52.
19 He's from Windsor.

20 THE CLERK: That's Juror No. 3, your Honor.

21 MR. KENNEDY: I believe he's the only one
22 that is from Windsor. But I may be mistaken.
23 I'll check.

24 THE COURT: Well, there's some risk in calling
25 him out and he turns out not to be the juror, and

1 then he'll go back and tell the other jurors.

2 MR. KENNEDY: Perhaps the detective could
3 indicate to Mr. Dabrowski which juror it is,
4 without having someone singled out.

5 THE COURT: Well, I think that at this stage
6 I can tell the jury that, you know, there's
7 nothing to indicate that he knew this fellow was
8 going to be a witness or had anything to do with
9 the case.

10 MR. KENNEDY: I think, in any event, despite
11 what the Court does about that, I think the
12 juror should be cautioned not to speak to any
13 others. I don't think we've done that.

14 THE COURT: Yes, I would propose to do that.

15 Maybe we can get a little more information
16 later as to identification of this juror; or
17 if you wanted, we might examine the officer under
18 oath, get that on the record as to his version
19 of the conversation, the circumstances, and then
20 see whether you want to renew an offer.

21 MR. KENNEDY: Is Detective Gasparino here?

22 MR. DABROWSKI: Detective Gasparino is here.
23 He, hopefully, will testify this afternoon, if
24 we can get to him.

25 THE COURT: Yes.

1 Well, let's wait a do it in due course.

2 All right. Call the jury.

3 (In the presence of the jury:)

4 THE COURT: Call your next witness.

5 MR. DABROWSKI: The Government calls Jose,
6 Lupacchino.

1 J O S E P H L U P A C C H I N O, J R.,

2 called as a witness, being first duly sworn, was
3 examined, and testified as follows:

4 THE CLERK: What is your name, sir?

5 THE WITNESS: Joseph Lupacchino, Jr.

6 THE CLERK: Will you please spell your last
7 name.

8 THE WITNESS: L-u-p-a-c-c-h-i-n-o.

9 THE CLERK: And your address, Mr. Lupacchino?

10 THE WITNESS: 1356 Manchester Road, Glaston-
11 bury, Connecticut.

12 DIRECT EXAMINATION

13 BY MR. DABROWSKI:

14 Q Mr. Lupacchino, how are you employed?

15 A I am the Branch Manager and Assistant Treasurer
16 of the United Bank & Trust Company, Windsor Office.

17 Q Were you the Branch Manager of the Windsor Office
18 on July 10th of 1976?

19 A Yes, I was.

20 Q Is the United Bank & Trust Company a federally
21 insured bank?

22 A Yes, it is.

23 Q Specifically insured by the Federal Deposit
24 Insurance Corporation?

25 A Correct.

1 Q I notice you have in front of you a framed docu-
2 ment.

3 MR. DABROWSKI: Your Honor, may I have a
4 photocopy of this document, which is the FDIC
5 certificate, marked as Government Exhibit 22 for
6 identification?

7 THE COURT: Any objection?

8 MR. KENNEDY: There is no objection. I've
9 agreed.

10 THE COURT: All right. The photocopy may be
11 accepted in evidence as Exhibit 2, is it?

12 MR. DABROWSKI: 22, your Honor.

13 THE CLERK: It's 22 for identification.

14 Do you want it as a full exhibit, Judge?

15 THE COURT: Yes, full exhibit. No objection
16 to it.

17 (Government Exhibit 22: Photocopy of FDIC
18 certificate, marked full exhibit.)

19 BY MR. DABROWSKI:

20 Q Now, showing you Government's Exhibit 22 marked
21 for identification, is that a copy of the framed document
22 you have before you?

23 A Yes, it is.

24 Q Where did you get that document from?

25 A Off the wall of my office behind the teller's

1 counter.

2 Q Did you take it down last night, about five o'clock?

3 A Yes, I did.

4 Q Was that document hanging on the wall of the bank
5 on July 10th of 1976?

6 A It was in a different spot, but it was on that
7 particular wall the day of the robbery.

8 Q And on July 10th of 1976 was the United Bank &
9 Trust Company, specifically the Windsor Avenue Branch, a
10 federally insured bank?

11 A Yes.

12 Q Now, were you in the bank on July 10th?

13 A Yes, I was.

14 Q Do you recall what day July 10th was?

15 A Saturday.

16 Q Now, directing your attention to approximately
17 eleven a.m. on that date, would you tell us who was present
18 in the bank; first, if you can recall, by bank employees
19 and then any customers.

20 A I was present, Mae Johnson was present, Linda
21 DePascale was present. Those are my two employees.

22 I had six customers. I had Marilyn Bonvouloir,
23 Larry Novella, Martin Olson, Willy Perrish, I can't remember
24 the -- there was a Mrs. Rita Henry who was at the drive-in
25 window at the time.

1 Q Now, did anything unusual occur at eleven a.m.?

2 A A robbery occurred at eleven a.m.

3 Q Do you have any recollection as to exactly what
4 time that robbery occurred?

5 A I know I looked at the clock right after the
6 robbery and it was eleven o'clock. It would be a few
7 minutes before eleven.

8 Q 10:58?

9 A Close.

10 Q Now, when you say a robbery occurred, let's assume
11 that the jury rail here is the counter in your bank.

12 A Yes.

13 Q And the drive-in teller, let's assume that it's
14 over by the exit sign.

15 A Correct.

16 Q Where, in relation to the jury rail, or to the
17 bank counter, and the drive-in window were you in the bank?

18 A I was directly in this area here (indicating).
19 My desk is almost across from the drive-in window, in the
20 rear wall.

21 Q Approximately how many feet away from the bank
22 counter were you at the time?

23 A Twelve-fifteen feet.

24 Q And you were at your desk?

25 A Correct.

1 Q Now, where, in relation to the bank counter, or
2 the jury rail, would the main entrance to the bank be?

3 A Up here where I'm sitting.

4 Q Now, you say the bank was robbed. How many indi-
5 viduals robbed the bank?

6 A Two.

7 Q When was the first time you realized the bank was
8 being robbed, and how did you come to that realization?

9 A Well, there was a commotion that was forming behind
10 me - instructions, shouting, yelling of some sort, which I
11 really don't recall the actual words. But instructions were
12 being given by a young black male holding a gun.

13 Q All right. Did you see that young black male --

14 You saw the young black male with a gun. Where
15 did you see him with the gun? Where was he, in relation to --

16 A In relationship, he was standing at the rear
17 entrance of the door that leads to our vault area, which is
18 located right down here at the end counter.

19 Q Did you see him come into the bank?

20 A No, I didn't. I was facing in such a position
21 that my back was towards the teller's counter.

22 Q So the first time you saw him he was how far away
23 from you?

24 A Ten feet.

25 Q Where was the other robber?

1 A At the particular point that I had turned around,
2 he was in the process of going over the counter.

3 Q Now, did he carry anything with him when he went
4 over the counter?

5 A I recall him being handed a black satchel - okay? -
6 when he hit the other side of the counter.

7 Q Who handed him the black satchel?

8 A The gunman; the black male who was holding the gun.

9 Q Now, you said that something was said, and you
10 don't remember exactly what was said. General orders were
11 given.

12 What was the general substance of what was said?
13 Do you remember that?

14 A Well, you knew there was a robbery in process.
15 I really don't recall exactly what the words were.

16 Q By virtue of the black male holding the gun saying
17 something?

18 A No. By virtue of I wasn't really concentrating --
19 at the time I had my back towards this whole thing. All
20 right? I did hear something being yelled, but at the time
21 I was in the process talking to a customer.

22 Q After you turned around, were any additional
23 instructions given?

24 A "Don't anybody move."

25 Q Who said that? Which one, the fellow that went

1 over the counter or the fellow with the gun?

2 A The one holding the gun.

3 Q Now, what did he say?

4 A Well, he instructed, in my particular case he
5 instructed me not to move. And in the position that I was,
6 he motioned, or I'm pretty sure he told me to turn around
7 and keep my hands on the desk.

8 So now I was behind my desk, like I was going
9 to be seated at my desk.

10 Q Did he point the gun at you?

11 A Yes, he did.

12 Q Did he point the gun at anybody else in the bank?

13 A He was more or less wielding the gun in my direc-
14 tion and the general direction of other customers in the
15 lobby.

16 Q Now, after the second individual vaulted the
17 counter what happened? What did he do? Where did that
18 individual go?

19 A He was in the process of starting to rifle the
20 drawers. He started at the first teller's station and he
21 continued to rifle all the drawers, up until the end teller's
22 spot.

23 Q I assume at some time they left, they left the bank?

24 A Yes.

25 Q How long were they in the bank?

1 A A minute, less than a minute.

2 Q Now, of the two individuals who robbed the bank,
3 the individual with the gun and the individual who vaulted
4 the counter, who did you look at the most?

5 A The only one I could really get a good description
6 on was the one who went over the counter.

7 Q All right. Yet is there any reason you couldn't
8 get a good description or a good look at the gunman?

9 A In the way that I was facing at the time, before
10 I was instructed to hit the floor. Okay? My head was
11 cocked in such a manner that my angle wasn't directly on the
12 gunman. All right? It was in his area, but my eyes were
13 not really directed on him. The thing --

14 Q Could you -- go ahead, continue.

15 A The thing that came to my immediate view was the
16 expression that was happening on Mrs. Johnson's face.

17 Q And what was that?

18 A Of fear. She looked like she was going to emo-
19 tionally break down and start crying at that particular point.

20 Q And Mrs. Johnson was the teller that was eight
21 months pregnant?

22 A Correct.

23 Q And behind the counter at that time, is that correct?

24 A Yes.

25 Q Now, could you describe the gunman to us?

1 A I really tried to concentrate on it. All I could
2 really tell you is he had a blue denim hat on, sunglasses,
3 here again only recalling days later, I did remember he had
4 a shirt and tie on.

5 Q How about the individual who vaulted the counter,
6 do you recall anything about him?

7 A No description whatsoever, other than his facial --
8 when I keyed in on the individual over the counter my view
9 was just on his head. That is all.. I was really trying to
10 get a good view of his face.

11 Q I'm showing you Government's Exhibit 2 marked for
12 identification. Do you recognize that?

13 A It's the hat that the gunman wore.

14 Q Are you absolutely certain of that?

15 A Well, I'm absolutely certain it looks like the hat
16 that the gunman wore.

17 Q I'm showing you Government's Exhibit 1 marked for
18 identification, a pair of sunglasses. Do you recognize
19 those?

20 A No, I don't.

21 Q Showing you Government Exhibit 12 marked for
22 identification, which is a black briefcase, do you recognize
23 that?

24 A Definitely the black briefcase.

25 Q Well, when you say "definitely," how do you recog-

1 nize it?

2 A The first thing that I saw when I initially
3 turned around after hearing the yelling was this black
4 briefcase, which I had seen the night before.

5 THE COURT: You had seen it the night before?

6 THE WITNESS: Yes, your Honor.

7 Q (By Mr. Dabrowski) Well, concentrating for the
8 moment on July 10th, the time that the bank robbery is in
9 progress, who had this black briefcase in his hands?

10 A And here again only after recalling, the gunman
11 at the time carried that in -- or I shouldn't say -- I didn't
12 see him carry it in. But the gunman took his gun out of
13 that briefcase and, in fact, handed it to the individual who
14 was on the other side of the counter.

15 Q I'm showing you Government's Exhibit 3 marked for
16 identification, which is a brown tie. Do you recognize this?

17 A No.

18 Q Showing you Government's Exhibit 20 marked for
19 identification, a shirt. Do you recognize that?

20 A No.

21 Q Showing you Government's Exhibit 15 marked for
22 identification, do you recognize these?

23 A No.

24 Q Showing you Government's Exhibit 16 marked for
25 identification, do you recognize these?

1 A No.

2 Q Showing you Government's Exhibit 14 marked for
3 identification, do you recognize this?

4 A No.

5 Q Showing you Government's Exhibit 13 marked for
6 identification, do you recognize that?

7 A No.

8 Q Now, when you say you don't recognize these items,
9 are you saying that these items were not worn by the bank
10 robber, either one of the bank robbers, or you don't recog-
11 nize them?

12 A I just do not recognize those particular articles.

13 Q Now, could you describe for us the gun that was
14 being held by the gunman?

15 A It was a revolver, blue/black metallic, and I said --
16 it had a two inch barrel.

17 Q Well, did you measure it?

18 A No. I approximated. I believe it had a two inch
19 barrel.

20 Q Do you recall what caliber it was, or do you know
21 what caliber it was?

22 A I really am not that familiar with the calibers.
23 I knew it wasn't a .44 and I knew it wasn't a .22.

24 Q Do you know the difference between a .22 and, say,
25 a .44 magnum?

- 1 A Yes, I know the difference between a .22 and .44.
- 2 Q Do you know the difference between a .22 and a .38?
- 3 A Yes.
- 4 Q Was the gun a .22?
- 5 A No.
- 6 Q Was it a .44 magnum?
- 7 A No.
- 8 Q Was it a .32?
- 9 A In my estimation it was between a .32 and a .38.
- 10 Q Was it closer to a .38, or --
- 11 A I would believe in my own mind it would have to be,
- 12 yes.. I would believe it would be closer to a .38.
- 13 Q Showing you Government's Exhibit 21 marked for
- 14 identification, you said the gun that you saw was blue
- 15 metallic?
- 16 A Yes; that is, blue/black metallic, yes.
- 17 Q Is this gun, the one I'm showing you, blue/black
- 18 metallic?
- 19 A In my estimation it is, yes.
- 20 Q So this is the same blue/black metallic as the gun
- 21 that you saw in the hands of that gunman on July 10th? The
- 22 same color. I'm not asking you to identify.
- 23 A Yes.
- 24 Q Do you recognize that gun?
- 25 A Only to the degree that it looks like the gun that

1 the gunman held.

2 Q Is the barrel length the same?

3 A Yes.

4 Q Now, did you notice, at the time that the gunman
5 had this gun in his hand, as to whether or not the gun was
6 loaded?

7 A I certainly did.

8 Q How did you know that?

9 A When he pointed it at me.. I was looking directly
10 at it.

11 Q And how could you tell that it was loaded?

12 A I looked down the chamber -- down the revolver
13 chambers, the holes on the side. I could tell there was
14 bullets in it.

15 Q Now, is there anything at all about this gun
16 that's different from the gun that the robber pointed at you?

17 A No, nothing that I can see.

18 THE COURT: Just as a matter of interest, is
19 it still loaded, this Exhibit 21?

20 MR. DABROWSKI: It is not, your Honor.

21 There are two bullets --

22 THE COURT: I mean this exhibit is not loaded,
23 right?

24 MR. DABROWSKI: This exhibit is not loaded,
25 your Honor.

1 There are two shells encased in the same
2 evidence envelope. But the weapon, itself, is
3 not.

4 THE COURT: All right.

5 MR. DABROWSKI: I have not only been assured
6 of that, but I have personally checked it as best
7 I can.

8 THE COURT: Well, how good are you at it in
9 checking?

10 MR. DABROWSKI: Well, I'm confident enough,
11 your Honor, to handle it in this courtroom.

12 THE COURT: You can assure the jury it's not
13 loaded?

14 MR. DABROWSKI: I can assure the jury it is,
15 your Honor.

16 If you would like, if there's any concern of
17 the Court, I'll have Agent Miller inspect it.

18 THE COURT: I don't want to look at it.

19 MR. DABROWSKI: It is not loaded, your Honor.

20 THE COURT: All right.

21 MR. DABROWSKI: Your Honor, as long as you've
22 raised it, perhaps it would be better. I'll have
23 Agent Miller inspect it, if you would like.

24 THE COURT: Have who?

25 MR. DABROWSKI: Special Agent David Miller.

1 THE COURT: Yes, I wish you would. Have him
2 inspect it.

3 MR. DABROWSKI: Agent Miller.

4 (Pause)

5 THE COURT: It's not loaded.

6 All right.

7 BY MR. DABROWSKI:

8 Q Mr. Lupacchino, at 10:58 on July 10th, 1976, and
9 a few minutes thereafter, when the robbery was in progress,
10 were you scared?

11 A Yes, I was.

12 Q Had you ever seen either one of the two individuals
13 who robbed the bank on July 10th before?

14 A Yes, I did.

15 Q When was that?

16 A On July 9th, Friday night.

17 Q Do you recall what time on Friday night?

18 A Approximately five o'clock.

19 Q What circumstances did you see them? Where?

20 A I was in the process of making a loan to one of
21 my customers. I had heard a fast shuffling of feet. I had
22 looked up and I saw two young black males half way down the
23 lobby, going to the rear entrance of the bank, which was
24 the same corner that they stood in the morning before. The
25 thing that I saw which made me concerned on Friday night was

1 the black satchel.

2 Q Showing you Government's Exhibit 12 for identifica-
3 tion, is that the black satchel?

4 A That's the same black satchel.

5 Q Was anybody else with you at the time that you
6 noticed them on Friday night, July 9th?

7 A Yes.

8 Q Who was that?

9 A Leroy Arnold, Jr.

10 Q Did you have any conversations with Mr. Arnold
11 right at that time?

12 A Yes, we did have conversations.

13 Q What was the substance of your conversations?

14 A I had mentioned that any time somebody enters the
15 bank - I can't recall the exact words - but any time some-
16 body enters the bank with a briefcase, I get a little con-
17 cerned.

18 And the way that they were standing there, I really
19 didn't know what they were looking for. Okay? And my tellers
20 were busy. I had a full crew that night. And I was trying
21 to concentrate on, you know, what they were trying to do.

22 It looked like they were waiting for a transaction
23 for the drive-in teller, and her back was towards them. It
24 was pretty crowded that night. They looked around some more
25 and then the both of them went up to one of the front service

1 counters and, I don't know, pulled out a withdrawal ticket,
2 or deposit ticket, or something, I think. And then they
3 both left the bank.

4 Q Now, they didn't transact any business in the bank?

5 A No, none whatsoever.

6 Q Do you know, were the two individuals who robbed
7 the bank on July 10th the same two individuals who came into
8 the bank on July 9th?

9 A I would have to say yes.

10 Q Why do you say yes?

11 A Only because if they were -- I shouldn't say that.

12 The one holding the briefcase, in fact, had the
13 same blue denim hat and sunglasses when he came in Friday
14 night.

15 Q Referring to Government's Exhibit 2?

16 A Yes.

17 Q And I marked for identification -- excuse me.

18 You said he had the same sunglasses on?

19 A Well, here again, he had sunglasses on. I could
20 not make a positive ID on what type of sunglasses. He had
21 sunglasses on with that blue denim hat.

22 Q Now, Mr. Lupacchino, would you look around this
23 courtroom and would you tell the ladies and gentlemen of
24 the jury whether or not you see either one of the individuals
25 who robbed your bank on July 10th, or who were present in

1 your bank on July 9th, in this courtroom?

2 A I see someone who looks similar to the black male
3 that came into the bank, the gunman holding the gun at the
4 time of the robbery.

5 Q And would you point out by virtue of where he is
6 either standing or seated?

7 A This gentleman right here, at the first desk
8 (indicating).

9 Q Seated on the right or left?

10 A Seated on the right-hand side.

11 MR. DABROWSKI: Your Honor, may the record
12 reflect that he has identified the defendant,
13 Wayne Brown, in this case?

14 THE COURT: Yes, the record may show that he
15 has identified.

16 Q (By Mr. Dabrowski) Now, what is it about Mr.
17 Brown --

18 THE COURT: He has pointed at Wayne Brown.

19 Go ahead.

20 A His features. The only thing that I could really
21 have a make on, and I refer to Friday night as well, they
22 were of slight build. All right? The only thing that I
23 could relate to myself the day that the robbery was occur-
24 ring is that they were both almost my same height. All right?

25 I said between five, five/five, six, maybe 150-155

1 pounds, I believe. Somewheres in that particular range.

2 Q Are you sure that the individual seated at the
3 table is not the individual who vaulted the counter?

4 A No, I'm not sure of that either.

5 Q Are you sure that he is -- excuse me. Not sure.
6 Does he resemble the individual who vaulted the
7 counter?

8 A No. Well, I shouldn't say it that way. I am sure.

9 I know who vaulted the counter. I know the second
10 one who vaulted the counter. This is not the second one who
11 vaulted the counter.

12 Q This individual resembles the gunman?

13 A Yes.

14 Q But you cannot positively say that that is the
15 gunman?

16 A No, I can't positively say.

17 Q Did he have a hat on? Well, he had this hat on?

18 A He had the hat and sunglasses.

19 Q Now, earlier this morning -- strike that.

20 On July 10th, at the time of this bank robbery,
21 was the Windsor Branch of the United Bank & Trust Company
22 equipped with any type of surveillance camera?

23 A Yes, we had two surveillance cameras.

24 Q Okay. Now, again utilizing the jury rail as repre-
25 sentative of the bank counter, where were the two cameras

1 located?

2 A Well, being this is the corner, the front corner
3 of the bank, they're located in the front corners of the
4 bank - one here and one here.

5 Q Do you know whether or not either one of those
6 cameras was operational at any time during the bank robbery?

7 A They were both activated at the end portion of the
8 robbery. The last thing that the second robber did was to
9 pull the -- he had activated the alarm system himself by
10 rifling the drawers, by taking out the money. And it was
11 the last drawer that he had rifled which, in fact, activated
12 the alarm system.

13 Q Do you know whether either one of those cameras
14 actually took pictures of the individuals in the progress
15 of robbing the bank?

16 A Yes, they did.

17 Q They did, or one of the cameras did?

18 A Well, I only know of one.

19 Q Today did you, in my office, look at a film?

20 A Yes, I did.

21 Q Did that film and does that film accurately depict
22 at least part of the events which occurred in your bank at
23 approximately eleven a.m. on July 10th of 1976?

24 A Yes, it did.

25 Q Is there anything inaccurate about what you saw on

1 the film?

2 A Only in regards to the end portion of my own
3 statement. In looking at the film this morning I did not --
4 I was under the belief that I was on the floor at the time
5 that the second robber came over the counter. But I was
6 still standing when the second robber was in the process
7 of coming over the counter.

8 Q Regardless of what your beliefs were, does that
9 film accurately depict what happened in your bank during
10 the robbery on July 10th?

11 A Yes.

12 MR. DABROWSKI: Your Honor, the Government
13 has that film here. I would like to show it to
14 the jury at this time.

15 I know Mr. Kennedy has an objection.

16 MR. KENNEDY: Well, there's no objection as
17 long as Mr. Dabrowski can say that he will tie
18 this up at a later point.

19 If he doesn't tie custody of the film at a
20 later point, I'll object now, for the purpose of
21 the record, if it is not tied in.

22 MR. DABROWSKI: Well, your Honor, I would
23 reserve --

24 THE COURT: Tie it in? I don't understand.

25 MR. KENNEDY: With respect to custody of the

1 film, your Honor.

2 MR. DABROWSKI: Your Honor, I would reserve
3 the option to call witnesses with regard to the
4 chain of custody of this film. But despite that --

5 THE COURT: May be admitted.

6 (Government Exhibit 23: Film, marked full
7 exhibit.)

8 MR. DABROWSKI: Your Honor, it will take me
9 only several minutes to set it up. With the per-
10 mission of the Court, I'll do that now.

11 THE COURT: Is this a couple of minutes
12 between 10:58 and eleven, or is this your couple
13 of minutes?

14 MR. DABROWSKI: No, your Honor.

15 Well, the film, itself, is perhaps five
16 minutes long.

17 THE COURT: Right.

18 MR. DABROWSKI: The portion of it that depicts
19 the bank robbery --

20 THE COURT: I'm talking about how long is it
21 going to take you to get it so that you can show it.

22 MR. DABROWSKI: Two minutes, your Honor.

23 THE COURT: All right.

24 MR. DABROWSKI: I think.

25 (Pause)

1 BY MR. DABROWSKI:

2 Q Prior to showing this film, how much of the film
3 actually depicts the robbery in progress?

4 A It's a matter of seconds; fifteen-twenty seconds,
5 maybe.

6 Q At the most. In other words --

7 A This is the end of the robbery. All right? He
8 hit the last drawer, he activated the cameras, the cameras
9 got him going back across the counter and then leaving the
10 bank.

11 MR. DABROWSKI: Your Honor, this is going
12 to require turning off the lights.

13 THE COURT: All right.

14 (Whereupon, the film was shown, at which time
15 the following questions were propounded to the
16 witness:)

17 BY MR. DABROWSKI:

18 Q Mr. Lupacchino, do you see yourself in this film?

19 A I'm lying on the floor.

20 Q Right here?

21 A Right near the doorway.

22 Q Is this the bank counter?

23 A Yes.

24 Q Mr. Lupacchino, I notice there are two --

25 A It's Mrs. Johnson and Mrs. DePascale.

1 Q Do you know who this gentleman is here?

2 A It's Willy Parrish. I keep saying Willy Parrish.
3 It's Willy Thomas, Mr. Dabrowski. His name is Thomas.

4 I keep saying Parrish and his name is Thomas, his
5 last name.

6 THE COURT: Is what we are looking at now
7 any part of the robbery in progress?

8 THE WITNESS: No.

9 MR. DABROWSKI: No, it is not, your Honor.

10 THE COURT: What are we looking at?

11 MR. DABROWSKI: This is just the film in the
12 camera running itself out. The bank robbery
13 terminated some time ago.

14 I have no objection to terminating the film
15 now, if Mr. Kennedy doesn't.

16 MR. KENNEDY: No, I have no objection, your
17 Honor.

18 MR. DABROWSKI: I had assumed that the entire
19 exhibit ought to be played.

20 Well, it has been.

21 (Whereupon, the showing of the film was
22 terminated.)

23 THE COURT: Was there any part of the robbery
24 that was shown in this film?

25 THE WITNESS: You missed it, your Honor, when

1 you were getting out of your chair.

2 THE COURT: I missed it?

3 THE WITNESS: Yes.

4 MR. DABROWSKI: I'll be happy to play it
5 back for the Court.

6 THE COURT: Well, I don't think anybody else
7 got it because there's no narrative, no explana-
8 tion of what's happening there.

9 MR. KENNEDY: I have no objection to playing
10 it again, your Honor.

11 THE COURT: It appears that in the showing of
12 the picture some persons are wearing black shirts
13 and have white hair. Is that a reverse?

14 THE WITNESS: I don't know, your Honor.

15 THE COURT: Were there people with white hair
16 around there?

17 THE WITNESS: No, your Honor.

18 THE COURT: With black shirts?

19 THE WITNESS: No, your Honor.

20 THE COURT: Does anybody know how this thing
21 works?

22 What are you showing there, just the negative?

23 MR. DABROWSKI: This is the negative, your
24 Honor.

25 I'll play just the first portion of this ex-

hibit again.

THE COURT: Can you explain what's going on down there?

THE WITNESS: You want me to explain, Mr. Dabrowski?

MR. DABROWSKI: Yes.

(Whereupon, the film was shown to the jury, during which the following occurred:)

THE WITNESS: All right. Right down here, the head moving is the second robber over the counter. He's just finished going through the rest of the drawers.

THE COURT: Get down there and point him out.

THE WITNESS: Let me see where I'm going.

He's right here. He's just in the midst. He will be leaping the counter here and you'll see him going around the end of the counter down here.

The gunman has moved up, up to the first -- the second teller's station.

Here he goes over the counter here on the top and they will both exit right now, leaving towards the front door.

I am going to the floor.

THE COURT: All right.

1 (Whereupon, the showing of the film was
2 stopped.)

3 MR. DABROWSKI: Your Honor, may this be
4 marked as Government's Exhibit 23?

5 THE COURT: May be so marked.

6 THE CLERK: The film of the robbery, Judge,
7 is Government's Exhibit 23, a full exhibit.

8 THE COURT: Yes.

9 BY MR. DABROWSKI:

10 Q Showing you Government's Exhibit 24 marked for
11 identification, would you examine that exhibit.

12 Does that photograph accurately depict the interior
13 of the bank on July 10th, 1976?

14 A Identical.

15 Q And this photograph is taken from what angle?
16 Where would one be standing in order to take this photograph?

17 A There's two desks over here. It's got to be
18 semi-corner, near the front door, looking at a side view
19 angle.

20 Q This photograph would be taken by an individual
21 standing at the front -- you would see this if you were
22 standing at the front door of the bank looking at the
23 teller's counter?

24 A Well, saying the wall is here, yes, the picture
25 would have to be taken from that particular corner over here,

1 near the front door entry.

2 MR. DABROWSKI: Your Honor, I would move for
3 the full admission of Government's Exhibit 24.

4 THE COURT: May be admitted.

5 MR. KENNEDY: No objection, your Honor.

6 (Government's Exhibit 24: Photograph of
7 interior of bank, marked full exhibit.)

8 BY MR. DABROWSKI:

9 Q Mr. Lupacchino, I'm showing you Government's
10 Exhibits 18 and 19 marked for identification. Do you recog-
11 nize either one of those exhibits?

12 A There we are. This is the money -- this is the
13 strap that was attached to the marked money the day of the
14 robbery.

15 Q When you say "marked money," what do you mean by
16 marked money?

17 A It's bait money. The five hundred dollars that
18 was in there is registered bills with our Audit Department.

19 Q Now, after the bank robbery was over was an audit
20 conducted in your presence?

21 A Yes, it was.

22 Q Were you advised of the results of that audit?

23 A Yes, I was.

24 Q Would you tell the ladies and gentlemen of the jury
25 how much money was taken during the bank robbery?

1 A \$2147.

2 O And bait money was taken during the bank robbery,
3 is that correct?

4 A \$500 were.

5 THE COURT: \$2141 was taken?

6 THE WITNESS: \$2147, your Honor.

7 THE COURT: And five hundred of that was
8 bait money?

9 THE WITNESS: Correct.

10 THE COURT: All right.

11 MR. DABROWSKI: Nothing further, your Honor.

12 CROSS-EXAMINATION

13 BY MR. KENNEDY:

14 Q Mr. Lupacchino, did there come a time subsequent
15 to the robbery that you were interviewed by either FBI
16 agents or local Windsor law enforcement agents?

17 A Yes.

18 Q When was that?

19 A Within -- well, within minutes after the robbery
20 police had, you know, shown up. I had given statements,
21 two different statements during the course of that day
22 between, I don't know, a two and three hour period by the
23 time all the witnesses were --

24 Q Is that when you gave your description of the
25 robbers?

1 A Yes.

2 Q And what was your description, again?

3 A Well, going one at a time, the gunman, the first
4 individual was a young black male. He was taller than the
5 second black male. I said between five, five/five, six,
6 maybe a hundred fifty-five pounds.

7 The second robber, who was over the counter, was
8 shorter than the first robber, slighter built, maybe five,
9 four/ five, five, a hundred forty-a hundred forty-five
10 pounds.

11 Q Did you tell the FBI on the 10th, the day of the
12 robbery, that the robber who was holding the gun was clean
13 shaven?

14 A Yes, I did.

15 Q Now, did there come a time subsequent to that, or
16 on that day, when you were shown a series of photographs de-
17 picting several persons?

18 A Two separate occasions.

19 Q Were they two separate spreads of photos, or one
20 spread of photos?

21 A I was under the belief they were two separate
22 spreads of photos.

23 Q Now, were you asked by the law enforcement author-
24 ities to see if you could pick out a person that was absolutely
25 the robber of the bank, out of those spreads of photos?

1 A Yes, I was.

2 Q Were you able to pick out someone?

3 A The first time I was able to pick out no one.

4 On the second occasion I was able to pick out the individual
5 who went over the counter.

6 Q Okay. Do you see that individual in the courtroom?

7 A No, I don't.

8 Q Now, you were not able to pick out the gunman.

9 When were those photos shown to you -- let me ask
10 you -- I'll strike that.

11 Let me ask it another way. Were the photos shown
12 to you approximately two days after the robbery, on July
13 12th?

14 A The first spread of photos were on that Monday.
15 And the second spread of photos, I really don't recall if
16 it was a day or two days after the first time.

17 Q And it's the second spread of photos that you
18 picked out the person that was not the gunman, is that
19 correct?

20 A Correct.

21 Q Now, most of the time during the robbery you were
22 watching which person in the bank, the gunman or the fellow
23 that vaulted the counter?

24 A It's awful hard to say. I tried to key in on both
25 of them. The way my head -- I was totally afraid to move my

1 body. All right? The only thing that was able to move
2 were my eyes. Okay?

3 And I tried to go from the gunman to the one who
4 was over the counter. I got a better view of the one who
5 was over the counter because of the angle he was at. I had
6 a clear shot of him.

7 Q If you had to take a guess, Mr. Lupacchino, how
8 long would you approximate that you looked at the gunman
9 during this chain of events during the robbery? How long
10 a period of time?

11 A Well, three-quarters of the robbery -- the rob-
12 bery occurred a minute.

13 Q Two or three seconds? Three or four seconds?

14 A That I looked at the gunman?

15 Q Yes.

16 A No. It was longer than that.

17 Q Well, from the time that you first noticed the
18 robbers till the time that you hit the floor, how many
19 seconds went by?

20 A Fifteen-twenty seconds, maybe, from the time that
21 the first yelling of instructions went off to the time I hit
22 the floor.

23 Q Now, when was the first time you focused in on
24 the gunman?

25 A When I initially turned around.

1 Q And then you watched the gunman until what point?

2 A Until I was instructed to hit the floor.

3 Q During that time you were also watching the man
4 that vaulted the counter, I take it?

5 A Yes. I had a direct angle, until Mrs. Johnson
6 disappeared to the floor. All right? I had three people
7 in my direct view.

8 Q So the entire process from when you first heard
9 one of the robbers until you hit the floor was approximately
10 fifteen seconds, or roughly the length of the film we just
11 saw?

12 A No. That's absolutely incorrect. What you saw --

13 Q Well, how long was it?

14 A What we --

15 Q I thought you just testified it was approximately
16 fifteen seconds.

17 A I know. What we saw on the film was the end of
18 the robbery. All right? Which was the last few seconds of
19 the minute that they were in there.

20 I would have to have been standing, I don't know,
21 thirty seconds before I hit the floor, the more I think
22 about it.

23 Q Now, after you hit the floor, what did you see then?

24 A Absolutely nothing.

25 Q Why not?

1 A Because my nose was to the floor. All I saw was
2 the floor.

3 Q The first thing you saw when the gunman came into
4 the bank was the man that went over the counter, is that
5 right?

6 A I saw both of them. Both of them were in visual
7 contact. All right?

8 At the time that I had turned around the black
9 satchel was being handed to the one on the other side of the
10 counter. He was going over the counter. It was being
11 handed to him, by the gunman.

12 Q Do you remember testifying at a previous hearing
13 in this matter?

14 A Yes, I do.

15 Q And is it possible that at that previous hearing
16 you suggested that the number of seconds you observed the
17 gunman was approximately five or six, of which time you
18 observed -- excuse me -- of which time, five or six seconds
19 you observed the robber, of which time three or four seconds
20 of which you observed the gunman?

21 A Do I recall saying that?

22 Q Yes.

23 And if you did, I'm asking you to explain it.

24 A I don't really recall exactly what I said at the
25 other hearing.

1 Q Is it fair to say that you're not certain of
2 exactly how much time went by during that span? Is that
3 a fair statement?

4 A Yes, that would be a fair statement.

5 Q Now, you said - and correct me if I'm wrong -
6 you said that you believed the same two men that were in
7 your bank on July 10th were also in your bank on July 9th,
8 is that correct?

9 A Yes.

10 Q Now, you were asked by Mr. Dabrowski was the
11 person sitting in the courtroom - is this this person, or
12 one of those persons. And you said he looked similar.

13 A Yes.

14 Q He looked similar, is that right?

15 A Yes.

16 Q Now, is it fair to say, Mr. Lupacchino, that the
17 reason this man looks similar to one of the robbers is be-
18 cause he has a relatively slight build and he's very close
19 to your height?

20 A Yes.

21 Q Is there anything else?

22 A No.

23 Q So for those two reasons you are saying that's the
24 similarity between the man sitting in the courtroom and the
25 man that robbed the bank on July 10th, 1976?

1 A He was a young black slightly built male.

2 Q Okay. You're not at all certain that this is the
3 exact young slightly built man that was in the bank?

4 A He's similar, in my estimation.

5 Q And you're not certain of that?

6 A I'm not certain about being similar?

7 Q You're certain about being similar, but you're
8 not certain that's the man; is that right?

9 A I'm not certain that's the man.

10 Q Do you know the difference between an automatic
11 and a revolver?

12 A Yes, I do.

13 Q What's the difference?

14 A An automatic, the bullet carriage is carried in
15 the handle. A revolver, you have a spring carriage.

16 Q Now, you explain to us how you can look at a
17 revolver, even if you're looking at the barrel, and tell
18 if the gun is loaded?

19 A I looked at the spring carriage. I did not look
20 at the barrel.

21 Q Okay. So you saw bullets in the spring carriage?

22 A Yes.

23 Q You're not sure there was one in the chamber?

24 A Absolutely not.

25 Q Now, is it fair to say that the reason you believed

1 the same man that was in the bank on the 10th -- the same
2 two men are the same two men that was in the bank on the
3 9th, in reference now to the gunman, is because he had a
4 blue denim hat on and sunglasses, and he was black and a
5 young man? Is that a fair statement?

6 A And that black briefcase.

7 Q Okay. Now, what you're saying to us is there
8 are similarities between the men that were in on the 9th
9 and on the 10th, or are you saying to us that you're
10 absolutely certain it's the same two individuals on both
11 occasions?

12 A I am absolutely certain.

13 Q Do you remember exactly what you said to Leroy
14 Arnold when you were seated in the bank on July 9th and
15 two fellows came into the bank?

16 A Something about I was nervous, I got nervous in
17 respect to the fact that he was carrying a black briefcase
18 with him. And they both looked suspicious in the manner
19 that they had hurried into the branch to the rear corner,
20 stood and did nothing.

21 Q Did you mention to Mr. Arnold that you were a
22 little afraid of two blacks coming into a bank, one of whom
23 was carrying a briefcase?

24 A Do I remember saying those exact words?

25 Q Well, they don't have to be those exact words. Do

1 you remember saying something that's extremely similar to
2 that, or those exact words?

3 Did you mention to Mr. Arnold that the thing you
4 were afraid of were two black people coming in your bank,
5 one of whom was carrying a briefcase? That this bothered
6 you?

7 A Well, I don't remember saying "black" people.
8 I remember saying about the briefcase.

9 MR. KENNEDY: I have nothing further of Mr.
10 Lupacchino, your Honor.

11 REDIRECT EXAMINATION

12 BY MR. DABROWSKI:

13 Q Mr. Lupacchino, what's different about the indivi-
14 dual seated at that table and the individual who robbed your
15 bank? Is there anything?

16 A What is different about the individual?

17 Q What's different? What's different about him?

18 MR. KENNEDY: Well, I'm going to object to
19 that question.

20 I think the question more correctly should be
21 phrased do you notice anything that is -- if a man
22 has testified to similarities --

23 THE COURT: Sustained.

24 BY MR. DABROWSKI:

25 Q With regard to your questioning by Mr. Kennedy con-

1 cerning the bullets you saw in the chamber --

2 A Yes.

3 Q -- of the revolver, did you see bullets in all
4 the chambers?

5 A Well, to be very honest, I focused on one side
6 and I saw bullets on one side of the chambers.

7 Q You didn't know whether there was a bullet right
8 in the barrel?

9 A No.

10 Q Do you know what happens when you pull the trigger
11 on a revolver; do you know what happens?

12 A That turns over the chamber and slides the bullet
13 into the barrel.

14 Q So it doesn't matter what's in the chamber that's
15 lined up with the barrel if someone pulls the trigger, does
16 it?

17 A No, it doesn't.

18 MR. DABROWSKI: Nothing further, your Honor.

19 MR. KENNEDY: Nothing further, your Honor.

20 THE COURT: All right.

21 (Witness excused.)

22 MR. DABROWSKI: The Government calls Linda
23 DePascale.
24
25

1 L I N D A D E P A S C A L E,

2 called as a witness, being first duly sworn, was
3 examined, and testified as follows:

4 THE CLERK: Will you state your name, loudly
5 and clearly?

6 THE WITNESS: Linda DePascale.

7 THE CLERK: How do you spell your last name?

8 THE WITNESS: D-e-P-a-s-c-a-l-e.

9 THE CLERK: And your address, Miss DePascale?

10 THE WITNESS: 24 Grove Street, Windsor Locks.

11 THE CLERK: Windsor Locks, Connecticut?

12 THE WITNESS: Yes.

13 DIRECT EXAMINATION

14 BY MR. DABROWSKI:

15 Q Linda, how are you employed?

16 A United Bank, as a secretary now.

17 Q Any particular branch office?

18 A Windsor Office.

19 Q 494 Windsor Avenue?

20 A Right.

21 Q Were you working there on July 10th?

22 A Yes.

23 Q And July 9th of 1976?

24 A Yes.

25 Q Now, directing your attention to eleven a.m. on

1 July 10th, do you recall who was in the bank at that time?

2 A At eleven a.m.?

3 Q Eleven a.m. on the morning of July 10th.

4 A The people that I work with?

5 Q Well, all right. Yes. First, employees of the
6 bank.

7 A Mae Johnson and Joseph Lupacchino.

8 Q And Joseph Lupacchino was the manager of the bank?

9 A Yes.

10 Q Mae Johnson was a teller?

11 A Yes.

12 Q Now, at eleven a.m. where were you in the bank?

13 A I was at my window, talking to one of the customers.

14 THE COURT: Talking to who?

15 THE WITNESS: One of the customers.

16 THE COURT: You knew the customer?

17 THE WITNESS: Willy Parrish.

18 THE COURT: Willy Parrish.

19 BY MR. DABROWSKI:

20 Q Assuming that the jury rail here is the bank
21 counter, you were on the other side of the counter?

22 A Right.

23 Q Now, did anything unusual happen?

24 A Well, I noticed two men coming in and they were
25 walking pretty fast. And they walked down to the corner of

1 the counter and I started to get up to wait on them, and I
2 noticed that Mae Johnson went over to them. So I started
3 to sit back down again.

4 Q When you say walking down to the end of the
5 corner, you mean down towards the drive-in teller area?

6 A Yes.

7 Q What happened then?

8 A Well, I started to sit down, and then I heard
9 someone start to scream that this was a holdup or stickup,
10 not to move.

11 Q Who started to scream?

12 A There was a guy there with a gun.

13 Q Could you describe him?

14 A No. I just looked at him and I turned my back
15 on him.

16 Q Do you recall what he started to scream, what he
17 started to say?

18 A He screamed either this was a stickup, or this
19 was a holdup, don't move, don't anybody move.

20 Q Now, what was the next thing that happened? You
21 said he had a gun?

22 A I turned around. I looked and he was propped up
23 against the counter, with the gun in his hand, and he had
24 it aimed towards me, and after that I just turned my back.

25 Q All right. So there was a time in which you looked

1 right at him?

2 A Yes.

3 Q And how long a time was it that you did, in fact,
4 look at him? A matter of several seconds or a minute?

5 A Several seconds, because I turned and saw the gun,
6 and I turned back again.

7 Q All right. Then what happened?

8 A Well, then he told me to move away from the
9 window, which I did. I pushed myself away.

10 Q When he told you to move away, were you looking
11 at him?

12 A No. I turned.

13 Q All right. What exactly did he say? How did he
14 tell you to move away?

15 A He just hollered for me to get away from there,
16 to move away from the window.

17 Q And now you're talking about the teller's window?

18 A Right.

19 Q And did you move?

20 A Yes.

21 Q All right. Now, you said the two individuals came
22 into the bank. What happened to the other one, what was he
23 doing at this time?

24 A He jumped over the counter with the bag and he was
25 going down the counter, pulling out the drawers, looking for

1 the money, and then he got to my window and took the cash.

2 Q At any time as he worked his way down the drawers
3 did you see him trip any automatic sequence or continuous
4 surveillance camera?

5 A When he started to pull the money out of my
6 window I saw him pull the strap that was my marked money,
7 so I knew the alarm had to go off.

8 Q Can you describe the individual who vaulted over
9 the counter? What was he wearing? Was he carrying anything?

10 A He had the black suitcase and he had a dark, like
11 purplish-colored shirt.

12 Q So your opportunity to observe the gunman was a
13 matter of several seconds?

14 A Right.

15 Q How long was the individual who vaulted the counter
16 in your eyesight?

17 A Like for -- it was just a matter of seconds for
18 him to run down. And then I had my -- I was turned sideways
19 to him, so I saw the side of him.

20 Q Now, you said the individual who vaulted the
21 counter was carrying a black briefcase. I'm showing you
22 Government's Exhibit 12 marked for identification. Do you
23 recognize this?

24 A Yes.

25 Q What is it?

1 A It's the briefcase that he had carried over the
2 counter to put the money in.

3 Q Is there any particular reason why you recognize
4 it?

5 A Because it was kind of -- because of the size and
6 the square handles on it.

7 Q Did you see where he got it from?

8 A No. The one with the gun had it first, and he
9 handed it to him somewhere in the corner before he jumped
10 over.

11 Q Now, do you recall what the individual holding
12 the gun was wearing?

13 A Sunglasses and a blue hat.

14 Q I'm showing you Government's Exhibit 2 marked for
15 identification and Government's Exhibit 1 marked for identi-
16 fication. Do you recognize that hat?

17 A Yes.

18 Q How do you recognize the hat? What is it?

19 A What is it?

20 Q Have you ever seen it before?

21 A Yes. He had it on his head. I remember the circles.

22 Q "He" being the one with the gun?

23 A Right.

24 Q I'm showing you Government's Exhibit 1 marked for
25 identification, a pair of sunglasses. Do you recognize those?

1 A No, I don't.

2 Q Do you recall, at the present time, the type of
3 sunglasses the bank robber was wearing; the gunman was wear-
4 ing?

5 A To me, you know, when I looked at him I thought
6 they were like a wrap type. They were dark.

7 Q Showing you Government's Exhibit 3, do you recog-
8 nize that?

9 A No, not really.

10 Q Well --

11 A It could be. I'm not positive. He had a dark tie
12 on.

13 Q Did either one of the individuals who robbed the
14 bank on July 10th have a tie on similar to this one?

15 A Yes.

16 Q Which one?

17 A The one with the gun.

18 Q Showing you Government's Exhibit No. 20, which is
19 a shirt, do you recognize that?

20 A It was a light colored shirt. I didn't see that
21 well.

22 Q Showing you Government's Exhibit 15 marked for
23 identification, a pair of pants, do you recognize these?

24 A No.

25 Q Government's Exhibit 16, another pair of pants.

1 Do you recognize these?

2 A No.

3 Q Government's Exhibit 14, a shirt. Do you recog-
4 nize this shirt?

5 A Yes.

6 Q How do you recognize this shirt?

7 A The one that had the briefcase that was at my
8 window was wearing that.

9 Q Showing you Government's Exhibit 13, do you
10 recognize this tie?

11 A No, I don't.

12 Q Now, did the gunman point the gun right at you?

13 A Yes.

14 Q Could you describe the gun?

15 A It was black, it was a dark color. It's the first
16 time I had seen a gun. I don't know what kind it was.

17 Q Do you know anything about guns?

18 A No. It was the first time I had seen one.

19 Q Showing you Government's Exhibit 21 marked for
20 identification, do you recognize this?

21 A Not from that angle. He had aimed it at me and
22 it looks similar to it.

23 Q The gun that was pointed at you on July 10th was
24 similar to this gun?

25 A Yes, it was that type of gun.

1 Q What do you mean by "that type of gun"?

2 A Well, with this (indicating).

3 Q A cylinder?

4 A A cylinder.

5 Q How about the length of the barrel, do you recall
6 how long the barrel was?

7 A No. Because it was aimed, I saw it from --

8 Q How about the color of the barrel?

9 A Yes.

10 Q Or the color of the gun, itself?

11 A The color, yes, it was a dark gun.

12 Q The same color as this gun?

13 A Yes.

14 Q Now, could you tell whether or not the gun was
15 loaded?

16 For example, could you see in this portion of the
17 gun here any bullets at the time it was pointed at you?

18 A I didn't know whether it was loaded or not, but
19 it was silver inside.

20 Q In here?

21 A Yes. You know, like all silver.

22 Q Linda, while this bank robbery was in progress
23 were you scared?

24 A Yes.

25 Q Now, would you look around the courtroom and tell

1 the ladies and gentlemen of the jury if you see either one
2 of the individuals who robbed the bank on July 10th present
3 here today?

4 A I can't say that he is. I can't say that he isn't.

5 Q All right. Who are you referring to?

6 A The gentleman sitting over there.

7 Q On the right or the left?

8 A On my right.

9 Q And at the table?

10 A Right.

11 MR. DABROWSKI: Your Honor, may the record
12 indicate that she has identified -- not "identi-
13 fied," but she has indicated that the individual
14 she was speaking of is the defendant.

15 THE COURT: Yes.

16 She can't say whether Wayne Brown is one
17 of the robbers.

18 Can you?

19 THE WITNESS: I can't be positive that he is.

20 THE COURT: You can't be positive.

21 MR. DABROWSKI: No further questions, your
22 Honor.

1 CROSS-EXAMINATION

2 BY MR. KENNEDY:

3 Q Is it Mrs. DePascale?

4 A Yes.

5 Q Now, you were standing where, when the robbers
6 first came into the bank.7 A At my teller's window, the first position in the
8 bank.

9 Q Where's the first position? Is that --

10 THE COURT: We've got the picture here.

11 Where is the photograph? Show her the
12 photograph.13 Q (By Mr. Kennedy) I show you Government's Exhibit
14 24, which is a full exhibit. Do you see your teller's
15 window in that exhibit?

16 A I'm down at this one (indicating).

17 MR. KENNEDY: The record should indicate that
18 the witness has pointed to the side of the photo-
19 graph farthest away from the wall.

20 THE COURT: Show the jury.

21 MR. KENNEDY: She has indicated her teller's
22 booth is down in this general area.

23 BY MR. KENNEDY:

24 Q Is that correct?

25 A Right.

1 Q How far away were you from the gunman? Ten feet,
2 twenty feet, thirty feet?

3 A About maybe fifteen-twenty feet.

4 Q And you said a few seconds, I believe; a few
5 seconds you observed him?

6 A Yes.

7 Q Did there come a time after the robbery or on the
8 day of the robbery you were asked to look at photos of a
9 group of persons?

10 A Yes.

11 Q Was that the day of the robbery?

12 A I think it was the day after. The day after the
13 robbery.

14 THE COURT: The robbery was on a Saturday,
15 was it?

16 THE WITNESS: Oh, it was Monday. It had to
17 be Monday.

18 Q (By Mr. Kennedy) July 12th; a Monday?

19 A Yes.

20 Q Were you shown a spread of photographs?

21 A Yes.

22 Q Or were you shown two spreads of photographs?

23 A I don't remember. I think two spreads.

24 Q Were you asked to attempt to make an identification
25 of the robbers from the spreads of photographs?

1 A I looked. I couldn't. I couldn't possibly
2 identify anybody. I wasn't sure.

3 THE COURT: You say you weren't sure. You
4 mean you weren't absolutely sure?

5 THE WITNESS: I wasn't absolutely sure.

6 THE COURT: Well, were you reasonably sure
7 about anybody?

8 THE WITNESS: There was a couple that I took
9 a second glance at, but I wasn't, you know -- I
10 couldn't say that that was --

11 THE COURT: You still couldn't say?

12 THE WITNESS: No.

13 THE COURT: All right.

14 BY MR. KENNEDY:

15 Q Now, on July 12th did you give a statement to the
16 police? Did you speak with them?

17 A Yes.

18 Q Did they write anything down when you talked with
19 them?

20 A Yes.

21 Q Did you give a statement, if you can remember?

22 A Yes, I did.

23 Q Did you tell the FBI that you weren't sure which
24 one of the robbers wore the blue denim hat at that moment?

25 A I'm not sure if I did or not.

1 Q You may have, you may not have? But you could
2 not remember which one wore the hat?

3 A I remembered. I don't know when it was it dawned
4 on me, but I remembered it was the one that carried the gun
5 that had the hat with the sunglasses.

6 Q Did you remember this later?

7 A I'm not sure.

8 Q Is it a fair statement, Mrs. DePascale, to say
9 that having been shown, with the exception of the purple
10 shirt you were shown, which is Government's Exhibit for
11 identification 14 - with the exception of this shirt, is it
12 a fair statement to say that you're not sure if the tie and
13 the pants were used in the robbery or they weren't?

14 A I'm not sure of the pants. The shirt I am.

15 Q With the exception of the shirt.

16 A Oh, I'm not sure.

17 Q The other items you were shown you're just not sure?

18 A I'm not sure.

19 THE COURT: What about the shirt?

20 THE WITNESS: The shirt I remember.

21 THE COURT: You remember?

22 THE WITNESS: Yes.

23 BY MR. KENNEDY:

24 Q You remember the shirt.

25 Do you remember speaking to the police; did they

1 ask you about the gun at the time they interviewed you,
2 right after the robbery?

3 A They asked me what type of gun it was. And I had
4 never seen a gun before.

5 Q They asked you to describe the gun, didn't they?

6 A Yes.

7 Q Well, is it fair to say you're not sure that that
8 gun that you were shown is the gun or not?

9 A I had never seen a gun before until the bank
10 robbery.

11 Q Okay. Well, you saw one this morning, is that
12 right?

13 A Yes.

14 Q You saw this gun.

15 A It was on that idea, with the barrel. I saw the
16 barrel and everything, you know, faced towards me. I didn't
17 see the side of the gun.

18 Q Well, is it a fair statement that you say that
19 this gun may or may not have been the gun; you're not really
20 sure?

21 A No. It looked -- the gun pointing this way was
22 the same type of gun that was there.

23 Q Pointing directly at you?

24 A Yes.

25 Q But it may or may not have been this gun that you

1 were shown this morning, Government Exhibit for identifica-
2 tion 21?

3 A I'm not positive it was the gun. It looks like
4 the gun.

5 THE COURT: She says it's the same type of
6 gun, looks like the gun, but she can't say that
7 was the gun.

8 Is that it?

9 THE WITNESS: Yes.

10 BY MR. KENNEDY:

11 Q It's also true that you cannot positively identify
12 the man sitting out here in the courtroom as either the
13 gunman or the man that vaulted over the counter, is that true?

14 A No.

15 Q That isn't true?

16 A I can't say that he is, I can't say that he isn't.
17 I'm not sure.

18 Q Okay. Now, did you ever ask, when you were asked
19 to testify in this case, not to have your name revealed?

20 MR. DABROWSKI: Objection, your Honor.

21 It's immaterial.

22 THE COURT: What's that? Not to have what?

23 MR. KENNEDY: I asked if she had ever asked
24 not to be revealed as a witness in this case.

25 I'm about to ask her the reason, if she answers

1 yes to that question; I want to know the reason
2 why she did ask that.

3 THE COURT: All right. Overrule --

4 MR. DABROWSKI: Objection, your Honor.

5 It is completely immaterial.

6 THE COURT: What's that?

7 MR. DABROWSKI: It's immaterial.

8 MR. KENNEDY: It may not be material --

9 MR. DABROWSKI: Not only is it immaterial,
10 but, the fact he wants to know the reason is
11 immaterial.

12 THE COURT: I'm not sure I know what this
13 is about. And if it has been kept a secret from
14 me it probably ought to be kept away from the jury.

15 So we will give the jury a chance for a
16 recess now while I go into it and we will see
17 whether it is something that ought to come out.

18 (In the absence of the jury:)

19 THE COURT: Now, what's the question?

20 MR. KENNEDY: Let me give you a little bit
21 of background.

22 At the time that we requested the witness
23 list from the Government in this case I think it's
24 a fair statement to say that Mr. Dabrowski gave us
25 a full list of his witnesses, with one exception.

1 THE COURT: Yes.

2 MR. KENNEDY: He gave you a manilla envelope
3 and inside that manilla envelope it included the
4 name of a witness who he mentioned was an employee
5 in the bank, and the reason was not given to us
6 but this witness' name was not to be revealed to
7 us.

8 THE COURT: Yes.

9 MR. KENNEDY: It is my belief, and I have no
10 absolute knowledge of this, but it is my belief
11 today that Mrs. DePascale is that witness.

12 Now, I don't know what could have been the
13 possible reason. It may not be material or it may
14 be material to this case, and it could possibly be
15 a grounds for appeal in the case.

16 I'm asking her what her reason was --
17 actually, my question required a yes or no answer:

18 Did you ever request that your name be kept
19 off a witness list or from the defense in this
20 case. If she answers yes to that question, then
21 I was going to pursue it one step further.

22 THE COURT: I will require her to answer that,
23 whether she made that request.

24 Did you request that your name --

25 THE WITNESS: Yes, I did.

1 THE COURT: Yes.

2 All right.

3 MR. KENNEDY: My next question was going to
4 be the reason she made that request.

5 THE COURT: All right. Allowed.

6 THE WITNESS: Because I just figured I had
7 enough; I didn't want to be bothered with anything
8 else.

9 BY MR. KENNEDY:

10 Q I take it the reason was you didn't really want
11 to be a witness in the case? That was your sole reason for
12 asking --

13 A No. I wanted to be a witness, but I just didn't
14 feel like I wanted to be bothered by other people's lawyers
15 and stuff. I was --

16 Q You didn't want to be bothered by anybody from
17 the defense in the case?

18 A I just didn't want to have to answer any more
19 questions than what I felt I had to. And I just didn't
20 want my name revealed, because I really didn't feel like
21 talking to them or their lawyers.

22 THE COURT: All right?

23 MR. KENNEDY: That's fine, your Honor.

24 I would like, for the record, to lodge an
25 objection - not to her testimony today, but from

1 the fact that was kept from us.

2 THE COURT: What?

3 MR. KENNEDY: I don't think that should have
4 been kept from us previously.

5 However, I have no objection to any of her
6 testimony today. That doesn't have to go before
7 the jury.

8 THE COURT: Does not have to go before the
9 jury?

10 MR. KENNEDY: No.

11 THE COURT: All right.

12 So are you through, then, with the cross-
13 examination of this witness?

14 MR. KENNEDY: I am. Unless Mr. Dabrowski
15 would like to have those questions and answers
16 put in front of the jury.

17 MR. DABROWSKI: I have no objection if Mr.
18 Kennedy does, your Honor. I have no particular
19 desire to have them. I think they are totally
20 irrelevant and immaterial to any issue before
21 the jury.

22 THE COURT: Well, I'll tell you. I'll let
23 you fellows talk it over while we have a recess.

24 As long as the jury is out, we will have a
25 recess.

1 And stay around for a few minutes, Mrs.
2 DePascale, till after the recess. We will see
3 what happens.

4 (Short recess.)

5
6 (In the absence of the jury:)

7 THE COURT: Have you decided that we are
8 through with the examination of Linda DePascale?

9 MR. DABROWSKI: Yes, your Honor.

10 MR. KENNEDY: Yes, both of us are through.

11 THE COURT: And this last part of examination
12 in the absence of the jury need not go before the
13 jury, right?

14 MR. KENNEDY: I don't think --

15 MR. DABROWSKI: I'll withdraw my objection
16 to it, your Honor. But I don't intend to offer it.

17 THE COURT: All right.

18 Call the jury.

19 Do you have your next witness?

20 MR. DABROWSKI: He is here, your Honor.

21 (In the presence of the jury:)

22 THE COURT: All right.

23 Call your next witness.

24 MR. DABROWSKI: The Government calls Leroy
25 Arnold.

1 L E R O Y A R N O L D, J R.,

2 called as a witness, being first duly sworn,
3 was examined and testified as follows:

4 THE CLERK: Will you state your name, loudly
5 and clearly.

6 THE WITNESS: Leroy Arnold, Jr.

7 THE CLERK: Will you spell your last name?

8 THE WITNESS: A-r-n-o-l-d.

9 THE CLERK: And your address, Mr. Arnold?

10 THE WITNESS: 22 Harold Street, Hartford.

11 THE CLERK: In what city?

12 THE WITNESS: Hartford.

13 THE CLERK: Hartford, Connecticut?

14 THE WITNESS: Right.

15 DIRECT EXAMINATION

16 BY MR. DABROWSKI:

17 Q How are you employed, Mr. Arnold?

18 A I'm employed at Calvin Ford.

19 THE COURT: How? What do you do?

20 THE WITNESS: I work at Calvin Ford as a
21 parts counter man. Salesman.

22 THE COURT: Calvin Ford?

23 THE WITNESS: Yes.

24 THE COURT: Where are they located?

25 THE WITNESS: East Hartford, Connecticut.

1 THE COURT: East Hartford.

2 How long have you worked there?

3 THE WITNESS: About a year and a half, sir.

4 THE COURT: All right, sir.

5 BY MR. DABROWSKI:

6 Q Directing your attention to July 9th of 1976,
7 specifically at between 4:30 and five p.m. on that date,
8 do you recall where you were on that date?

9 A I was at the bank out in Windsor; Windsor Branch
10 Bank.

11 Q The United Bank & Trust Company?

12 A Right.

13 Q The Windsor Avenue Branch, 494 Windsor Avenue,
14 Windsor, Connecticut?

15 A Right.

16 Q What were you doing in the bank?

17 A Okay. I had went there to talk to the manager,
18 Lupacchino, about a loan.

19 Q And were you, in fact, talking to Joe Lupacchino
20 about a loan?

21 A Yes, I was.

22 Q Did anything unusual happen during your conversa-
23 tion with Mr. Lupacchino?

24 A Yes.

25 MR. KENNEDY: Your Honor, I'm going to object

1 at this point on this ground.

2 THE COURT: What's that?

3 MR. KENNEDY: My objection is based on this
4 ground:

5 This man was in the bank July 9th and he
6 has not testified anything about being in the
7 bank on July 10th, and I don't believe he was.
8 Therefore, my objection is based on I don't see
9 where his testimony can possibly be relevant.

10 THE COURT: Well, let's see what it is first,
11 before you object.

12 You were talking to Mr. Lupacchino at 4:30 p.m.?

13 THE WITNESS: Yes.

14 THE COURT: Where was he in the bank?

15 THE WITNESS: We was both sitting at the desk,
16 at his little desk he had at the side.

17 THE COURT: At his desk?

18 THE WITNESS: Yes.

19 THE COURT: Had you been in the bank before?

20 THE WITNESS: Yes, quite frequently.

21 THE COURT: Go ahead.

22 BY MR. DABROWSKI:

23 Q Were there a lot of people in the bank at that time?

24 A I believe it was just me, him, and I think another
25 customer had walked in at this time.

1 Q Now, did anything unusual happen while you were
2 talking to --

3 A Yes. Two guys walked in. And they walked in,
4 looked behind the teller's thing, and they walked down the
5 other end. They looked down the end of it. Then they
6 walked back out.

7 Q You said two guys walked in. How tall were they?

8 A Approximately five, eight/ five, nine.

9 Q Were they black or white?

10 A Black.

11 Q Male or female?

12 A Both male.

13 Q Do you recall what they were wearing?

14 A The only thing I'd say is wearing hat, glasses,
15 and I believe dark clothes.

16 Q Were they carrying anything?

17 A They was carrying a briefcase.

18 Q They were carrying?

19 A As you were. One was carrying a briefcase.

20 Q One was carrying a briefcase.

21 Now, did you have a conversation with Mr. Lupa-
22 cchino about these two individuals?

23 A Yes. What we did, we both looked around and Mr.
24 Lupacchino said: "Ooh, that makes me nervous." I said,
25 "It does to me, too." But at the same time he was walking out.

1 Q Why did it make you nervous?

2 A Because the way they came in and looked around.

3 THE COURT: Because of what?

4 THE WITNESS: Because of the way they came
5 in with the suitcase and the way he looked behind
6 the teller and the way they -- like I guess you'd
7 say looking over the area.

8 Q (By Mr. Dabrowski) Did they transact any bank
9 business in the bank while you were there?

10 A None whatsoever.

11 Q I'm showing you Government's Exhibit 12 marked
12 for identification. Have you ever seen that briefcase before?

13 A I believe I have.

14 Q Where was that?

15 A It was one of the gentlemen was carrying it.

16 Q When you say one of the gentlemen was carrying it,
17 you're talking about one of those black males that came into
18 the bank between 4:30 and five o'clock on July 9th?

19 A That is correct.

20 Q Now I'm showing you Government's Exhibit 2 marked
21 for identification. Do you recognize this hat?

22 A There is a possibility of --

23 THE COURT: What?

24 A It does look similar to the one he had on, yes.

25 Q Who is "he"?

1 A The one that was carrying the briefcase.

2 Q Mr. Arnold, I ask you to look around this court-
3 room and tell me if you see either one of the two individuals
4 who entered the bank on July 9th and were in the bank in
5 your presence, in this courtroom today.

6 A I cannot positively now identify him correctly
7 because like when my back was turned I just glanced and I
8 can't, you know, give direct identification.

9 Q You don't know whether he's here or he's not here?

10 A No, I don't.

11 MR. DABROWSKI: Nothing further, your Honor.

12 MR. KENNEDY: I have no questions, your Honor.

13 THE COURT: All right. You may step down.

14 (Witness excused.)

15 MR. KENNEDY: I move that his testimony be
16 struck on the grounds of relevancy.

17 THE COURT: Denied.

18 Perhaps I should explain to the jury the
19 significance of this testimony, taken in connection
20 with that of Mr. Lupacchino and with what he saw.

21 The fact that the remark was made, "Ooh, this
22 makes me nervous," or whatever it was, that's
23 admissible not to prove that he was nervous, but
24 to prove the degree of attention which he was
25 directing at that time to what he remarked about.

1 All right. He remarked about what he noticed
2 and the remark is just to sort of underscore his
3 degree of notice.

4 All right.

5 MR. DABROWSKI: The Government calls Lawrence
6 Novella.

1 L A W R E N C E N O V E L L A,

2 called as a witness, being first duly sworn, was
3 examined, and testified as follows:

4 THE CLERK: Will you state your name for
5 the Court.

6 THE WITNESS: Lawrence Novella.

7 THE CLERK: How do you spell your last name?

8 THE WITNESS: N-o-v-e-l-l-a.

9 THE CLERK: And your address, Mr. Novella?

10 THE WITNESS: 3 Sherman Avenue, East Hartford,
11 Connecticut.

12 DIRECT EXAMINATION

13 BY MR. DABROWSKI:

14 Q Mr. Novella, how are you employed?

15 A I'm self-employed.

16 Q In what capacity?

17 A At Singer Sewing Machine in Windsor.

18 Q And is that in the general vicinity of the United
19 Bank & Trust Company?

20 A It's in the same shopping center.

21 Q Now, directing your attention to July 10th, 1976,
22 at approximately eleven a.m. in the morning, were you in the
23 bank at that time?

24 A Yes, I was.

25 Q Do you recall if there were other customers in the

1 bank?

2 A Yes.

3 Q And there were bank employees, is that correct?

4 A Yes.

5 Q Did anything unusual happen in the bank on that
6 date, at that time?

7 A Yes. There was a holdup.

8 Q When you say there was a holdup, when is the first
9 time that you realized there was a holdup and why did you
10 realize there was a holdup?

11 A Well, I was making a deposit and I saw these two
12 black men come in. And through the corner of my eye I
13 noticed they were looking all around the bank. And I told
14 myself it was a holdup.

15 I knew it. I just sensed it.

16 Q At that time had you seen a gun?

17 A No, I didn't.

18 Q Had you heard anything like, "This is a stickup."

19 A No. No, I didn't.

20 Q But you knew that there was going to be a holdup?

21 A I surmised it.

22 Q All right. There were two of them. Do you recall
23 what they were wearing?

24 A Just a shirt. They were really dressed nice.

25 Shirt, tie, pants. And one fellow had a hat, with sunglasses

1 on.

2 Q Where did they go and what did they do?

3 A They went around about ten feet past me, and then
4 the fellow with the sunglasses put the briefcase down, he
5 turned around and he came up holding a revolver. And he
6 directed everyone to stay where they are, that this was a
7 holdup.

8 Q Was that exactly what he said, do you recall?

9 A Well, no. He said, in a roundabout way, "Don't
10 anybody move. This is a holdup."

11 Q What did the other individual do while the gunman
12 was issuing commands?

13 A He ran in back of the cage and started taking
14 money out of the tellers' cages.

15 Q How did he get in back of the cage? Did he go
16 over it, under it, around it?

17 A I don't recall.

18 Q But at some point he got up behind that counter?

19 A Yes.

20 Q Now, he was rifling the cages behind the counter?

21 A Yes.

22 Q What was the gunman doing while the individual was
23 behind the counter?

24 A He had the gun pointed at us.

25 Q Was he saying anything?

1 A Well, he didn't. But one of the women was about
2 ready to leave and he directed her not to leave.

3 Q How did he direct her not to leave and what did he
4 say?

5 A Well, he said to her: "Where do you think you're
6 going?"

7 Q Did he point the gun at her?

8 A And she said, "I'm leaving." He said, "No, you
9 don't. Come back in here."

10 Q Now, were you watching the gunman when he said
11 these things?

12 A I watched him as soon as he came in, but then I
13 faced directly ahead.

14 Q How long a time did you have the gunman in your
15 sight?

16 A I'd say roughly about five seconds.

17 Q Now, would you look around this courtroom and tell
18 the ladies and gentlemen of the jury if you see either one
19 of the individuals who robbed the bank on July 10th present
20 , here today?

21 A That might be him.

22 Q You're not -- are you positive?

23 A No.

24 Q "It might be him." Why do you say it might be him?

25 A It's hard to distinguish because he doesn't have a

1 hat or sunglasses on.

2 Q Showing you Government Exhibit 2 marked for
3 identification, do you recognize this hat?

4 A Yes.

5 Q How do you recognize it? What is it?

6 A I think that's the one he was wearing.

7 Q The one the gunman was wearing?

8 A Yes.

9 Q I'm showing you Government's Exhibit 1 marked
10 for identification - a pair of sunglasses. Do you recognize
11 these sunglasses?

12 A They might be the sunglasses, but then again sun-
13 glasses you can't tell what they are.

14 Q These might be the sunglasses, but you're positive
15 this is the hat?

16 A To my knowledge.

17 Q Now, do you recall what kind of a gun the gunman
18 had?

19 A The only thing I remember was like a metal grey
20 color.

21 Q All right. I'm showing you Government's Exhibit
22 21 marked for identification. Have you ever seen that gun
23 before?

24 A I can't very well say I did or I didn't, because
25 the way it was pointed at me the only thing I was looking at

1 was the barrel.

2 Q Was that gun the same color as the gun that was
3 pointed at you?

4 A Yes.

5 Q This gun here is a revolver, is that correct?

6 A Yes.

7 Q Was the gun that was pointed at you a revolver?

8 A Yes.

9 Q Do you know or do you recall whether the gun that
10 was pointed at you was a snub nose or a short barreled
11 weapon?

12 A I couldn't tell. The way I was looking at the
13 gun it was hard to tell because it was pointed at me, not
14 against me (indicating).

15 Q I'm showing you Government's Exhibit 12 marked
16 for identification. Do you recognize that?

17 A It could be the bag he used.

18 Q Why do you say that?

19 A Because he was carrying a dark bag, and when the
20 gun came out of it it was a dark colored bag.

21 Q Showing you Government's Exhibit 15 marked for
22 identification, do you recognize these pants?

23 A No.

24 Q Showing you Government's Exhibit 16 marked for
25 identification, do you recognize these pants?

1 A That could be the pants he was wearing.

2 Q Which one is "he;" the one with the gun or the
3 one --

4 A The one with the gun.

5 Q Excuse me?

6 A The one with the gun.

7 THE COURT: What number is that?

8 MR. DABROWSKI: 16, your Honor.

9 Q I'm showing you Government's Exhibit 20 marked for
10 identification - a shirt. Do you recognize that?

11 A It could be the shirt he was wearing, too.

12 Q Who is "he"?

13 A The gunman.

14 Q I'm showing you Government's Exhibit No. 3, a tie.

15 A That could be the tie also.

16 Q Why do you say that could be the tie?

17 A Well, at that moment there, I just looked directly
18 ahead. I didn't want to be involved because I was the
19 closest one to him and he had that gun pointed at me.

20 Q When you're referring to the tie are you saying
21 the tie worn by the gunman?

22 A Yes.

23 Q Or the tie worn by the fellow that went over the
24 counter?

25 A By the gunman.

1 Q Also when you identified the shirt and the pants
2 as clothing that could have been worn by the gunman, are
3 you sure that that clothing wasn't worn by the individual
4 who vaulted the counter?

5 A I couldn't definitely tell you yes or no.

6 Q So it could have been worn by either one of them?

7 A The only thing I remember, that the gunman was
8 dressed real nice. He had a tie, a shirt and a nice pair
9 of pants on.

10 Q Showing you Government's Exhibit 13, a tie, do
11 you recognize that?

12 A No.

13 Q Showing you Government's Exhibit 14 marked for
14 identification, do you recognize this?

15 A No.

16 MR. DABROWSKI: Nothing further of this
17 witness, your Honor.

18 CROSS-EXAMINATION

19 BY MR. KENNEDY:

20 Q Mr. Novella, is it fair to say that of the clothing
21 you were just shown you're not really sure whether this may
22 have been the clothing that was worn by one of the robbers
23 or whether, in fact, they were some other kind of clothing?
24 Is that a fair statement?

25 A Yes.

1 Q Now, the gunman came within approximately ten
2 feet of you, is that as close as he got?

3 A Yes.

4 Q You have to answer audibly.

5 How long did you look at him - approximately five
6 seconds or so?

7 A About five seconds.

8 Q Now, did you give a description to the police
9 about the gunman?

10 A Yes, I did.

11 Q Can you remember what you said?

12 A I said he was kind of short, slim build, I'd say
13 in his thirties.

14 Q You'd say he was about five, seven, 135-140?

15 A Something like that. The only thing I remember:
16 He was shorter than me, and I'm five, ten.

17 Q Now, did there come a time after the robbery when
18 you were shown any photographs of groups of persons that
19 the Government -- that the law enforcement agencies thought
20 may or may not have been a person in the robbery?

21 A In other words, did you want to know if I --

22 Q Strike that question.

23 Were you shown any photographs subsequent to the
24 robbery?

25 A Yes, I was.

1 Q Were these in photographic spread?

2 A Yes, they were.

3 Q Whether there was one, two, three - how many
4 spreads were you shown?

5 A At least a half a dozen; six.

6 Q You were shown at least half a dozen photos, but
7 how many spreads?

8 A All at one. In other words, not individually.

9 Q Now, do you remember when that was? A couple days
10 after the robbery?

11 A Three, four days after the robbery.

12 Q Did the police ask you to make an identification,
13 if you could?

14 A Yes.

15 Q Could you make an identification?

16 A No.

17 Q Now, when the police asked you to make an identi-
18 fication here did you inform them that you could not make an
19 identification?

20 A I told them there was a couple that might look
21 like them, but I wasn't definitely sure.

22 Q Did the police, in any way, kind of rattle you
23 about not making any identification?

24 A No.

25 Q They didn't say anything such as, "How come you

1 can't make an identification?"

2 A No.

3 Q "You're only ten feet away"?

4 A No. They were very polite.

5 Q Did you ever say to anyone that the two robbers
6 looked like businessmen to you?

7 A No.

8 Q You never did?

9 A Just that I said they were nice dressed.

10 Q Do you remember speaking to a defense investigator
11 in this case?

12 A Well, some fellow did approach me. When was it --
13 Monday or Saturday. Saturday.

14 Q You do remember?

15 A Yes. He said he was from the District Court.

16 Q Do you remember telling him that the men looked
17 like businessmen to you, or something like they were so well
18 dressed they looked like businessmen?

19 A No, I don't recall ever telling that they looked
20 like businessmen.

21 THE COURT: Looked like what?

22 THE WITNESS: Like businessmen.

23 THE COURT: You're a businessman?

24 THE WITNESS: Right.

25 THE COURT: Yes. All right.

1 BY MR. KENNEDY:

2 Q Let me ask you this, Mr. Novella. If there was
3 another black man of approximately the defendant's stature
4 sitting at that table, would you have also said today that
5 that might be him?

6 A Would I have also said that might be him?

7 Q Yes.

8 A It might be him.

9 THE COURT: Who might be him?

10 THE WITNESS: The fellow there (indicating).

11 THE COURT: That fellow.

12 But what he asked was if there was another
13 black male sitting beside him, would you say --

14 MR. KENNEDY: Of his stature.

15 THE WITNESS: Well, if he was the same build,
16 I probably would say he looked like him, too.

17 THE COURT: All right.

18 BY MR. KENNEDY:

19 Q You were shown Government's Exhibit for identifica-
20 tion 12, the black bag, which I cannot now locate.

21 Oh. I take it you're not sure if this is the bag
22 or not, but what you are saying is it was a dark bag?

23 A Right.

24 Q Is that right?

25 A Right.

1 MR. KENNEDY: I have nothing further of
2 Mr. Novella, your Honor.

3 THE COURT: Any Redirect?

4 MR. DABROWSKI: No, your Honor.

5 THE COURT: All right. Mr. Novella, you
6 may be excused.

7 THE WITNESS: Thank you, your Honor.

8 (Witness excused.)

9 MR. DABROWSKI: The Government calls Rita
10 Henry, your Honor.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

APPELLEE

VS.

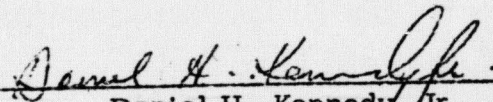
WAYNE BROWN,

APPELLANT

DOCKET NO. 77-1030

CERTIFICATION OF SERVICE

In accordance with Rule 25 (d) F.R.A.P., the appellant, Wayne Brown hereby certifies that on the 23rd day of February, 1977, a copy of the appellant's brief and appendix was hand delivered to Albert S. Dabrowski, Esq., Assistant U.S. Attorney, 450 Main Street, Hartford, Connecticut and that on said date eight copies of said brief and appendix were mailed, postage prepaid to the United States Court of Appeals for the Second Circuit, United States Courthouse, Foley Square, New York, 10007.



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